



DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 106

[CIS No. 2688-21; DHS Docket No. USCIS-2021-0011]

RIN 1615-AC73

Implementation of the Emergency Stopgap USCIS Stabilization Act

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is amending DHS premium processing regulations to codify statutory changes made by the Continuing Appropriations Act, 2021 and Other Extensions Act (Continuing Appropriations Act). The Continuing Appropriations Act included the Emergency Stopgap USCIS Stabilization Act (USCIS Stabilization Act), which amended the Immigration and Nationality Act (INA) by modifying U.S. Citizenship and Immigration Services' (USCIS) authority to provide premium processing services and to establish and collect premium processing fees for those services. This rule amends DHS premium processing regulations by updating the regulations to include the fees established by the USCIS Stabilization Act for immigration benefit requests that were designated for premium processing on August 1, 2020, and establishing new fees and processing timeframes consistent with section 4102(b) of the USCIS Stabilization Act.

DATES: *Effective Date:* This rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The availability of premium processing for newly designated immigration benefit requests will be announced by USCIS in accordance with DHS premium processing regulations and will become available as stated at that time.

Comment Date: DHS will only accept comments on the revised information collection Form I-907 described in the Paperwork Reduction Act section of this rule. Comments on the revised information collection must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This comment period applies to the Paperwork Reduction Act section of this rule only; it does not cover the substance of the regulatory changes, future policy associated with premium processing availability, or on any other topic related to this rulemaking beyond the proposed revisions to the impacted information collections.

ADDRESSES: All comments on the information collection must be submitted through the Federal eRulemaking Portal: <https://www.regulations.gov>. The comments on the information collection must be identified by DHS Docket No. USCIS 2006-0025 and OMB Control Number 1615-0048. Follow the website instructions for submitting comments. Comments submitted in a manner other than the one listed above, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the information collection requirements and will not receive a response from DHS. Please note that USCIS cannot accept any comments that are hand delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using <https://www.regulations.gov>, please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721-3000 for alternate instructions. Public comments submitted on matters related to this final rule, but not specifically associated with the revised information collections, will not be considered by DHS.

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Table of Abbreviations

APA – Administrative Procedure Act
BLS – Bureau of Labor Statistics
CEQ – Council on Environmental Quality
CFR – Code of Federal Regulations
CPI – Consumer Price Index
CPI-U – Consumer Price Index for All Urban Consumers
CRA – Congressional Review Act
DHS – Department of Homeland Security
EB – Employment-Based
E.O. – Executive Order
FR – *Federal Register*
FY – Fiscal Year
GPO – Government Publishing Office
ICE – Immigration and Customs Enforcement

INA – Immigration and Nationality Act
IT – Information technology
NARA – U.S. National Archives and Records Administration
NEPA – National Environmental Policy Act
NIW – National Interest Waiver
NPRM – Notice of Proposed Rulemaking
OP&S – Office of Policy and Strategy
OMB – Office of Management and Budget
PRD – Policy Research Division
Pub. L. – Public Law
RFA – Regulatory Flexibility Act
RIA – Regulatory Impact Analysis
SBREFA – Small Business Regulatory Enforcement Fairness Act
Secretary – Secretary of Homeland Security
Stat. – U.S. Statutes at Large
UMRA – Unfunded Mandates Reform Act of 1995
U.S.C. – U.S. Code
USCIS – U.S. Citizenship and Immigration Services
USCIS Stabilization Act – Emergency Stopgap USCIS Stabilization Act

I. Executive Summary

A. Purpose of the Regulatory Action

The purpose of this rulemaking is to amend the DHS premium processing regulations to codify those fees set by the USCIS Stabilization Act under section 286(u)(3)(A) of the INA, 8 U.S.C. 1356(u)(3)(A), and to establish new fees and processing timeframes for new immigration benefit requests, consistent with the conditions and eligibility requirements set forth by section 4102(b)(1) of the USCIS Stabilization Act.

In 2000, Congress added new section 286(u) to the INA, 8 U.S.C. 1356(u), to permit the former Immigration and Naturalization Service to designate certain employment-based immigration benefit requests for premium processing subject to an additional fee.¹ At the time, Congress set the premium processing fee and authorized USCIS to adjust the fee for inflation, as determined by the Consumer Price Index for All Urban Consumers (CPI-U).² On this basis, USCIS established premium processing fees

¹ See Pub. L. 106-553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A-68 (Dec. 21, 2000); INA sec. 286(u) (2000), 8 U.S.C. 1356(u)(2000).

² *Id.*

and timeframes for certain employment-based petitions, including Form I-129, Petition for a Nonimmigrant Worker, and Form I-140, Immigrant Petition for Alien Workers, in certain visa classifications. Petitioners and applicants request premium processing through filing Form I-907, Request for Premium Processing Service, and paying the appropriate fee.³

On October 1, 2020, the Continuing Appropriations Act, which included the USCIS Stabilization Act, was signed into law. The USCIS Stabilization Act set new fees for premium processing of immigration benefit requests that had been designated for premium processing as of August 1, 2020, and expanded DHS authority to establish and collect new premium processing fees, and to use those additional funds for expanded purposes.⁴

B. Legal Authority

The Secretary of Homeland Security's (Secretary) authority for regulatory amendments is found in various provisions of the INA, 8 U.S.C. 1101, et seq., and the Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135, 6 U.S.C. 101, et seq. General authority for issuing this rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws, and to establish such regulations as the Secretary deems necessary. In addition, section 286(u) of the INA, 8 U.S.C. 1356(u), provides the Secretary with authority to establish and collect a premium fee for the premium processing of certain immigration benefit types. The Continuing Appropriations Act, 2021 and Other Extensions Act, which was signed into law on October 1, 2020, contains the Emergency Stopgap USCIS Stabilization Act (USCIS Stabilization Act).⁵ The USCIS Stabilization Act, among other things, set new fees for immigration benefit requests that were

³ See 66 FR 29682 (Jun. 1, 2001); *see also* 8 CFR 103.7(b)(1)(i)(SS) and (e).

⁴ See Emergency Stopgap USCIS Stabilization Act, Pub. L. 116-159, sec. 4102 (Oct. 1, 2020).

⁵ USCIS Stabilization Act, Pub. L. 116-159 (Oct. 1, 2020).

designated for premium processing on August 1, 2020, and expanded USCIS authority to establish and collect additional premium processing fees, and to use those additional funds for expanded purposes, including to provide premium processing services to requestors, to make infrastructure improvements in adjudications processes and the provision of information and services to immigration and naturalization benefit requestors, to respond to adjudication demands, including by reducing the number of pending immigration and naturalization benefit requests, and to otherwise offset the cost of providing adjudication and naturalization services.⁶

C. Summary of Costs and Benefits

The USCIS Stabilization Act increased the fees for premium processing services already available, sets fees for and expands premium processing to additional immigration benefits requests, and provides specific purposes for the premium processing fees.⁷ The fees may be used to provide the premium processing services; make infrastructure improvements in adjudications processes and the provision of information and services to immigration and naturalization benefit requestors; respond to adjudication demands, including by reducing the number of pending immigration and naturalization benefit requests; and otherwise offset the cost of providing adjudication and naturalization services.⁸ This rule provides DHS with the opportunity to increase revenue in order to make infrastructure improvements and improve processing times, among other purposes.

This expansion of electronic filing to application and benefit requests is a prerequisite so that the premium processing form, Form I-907 (which is not currently available electronically) could be filed electronically with the benefit request form for which premium processing is being requested. USCIS plans to encumber additional IT

⁶ See *id.* at sec. 4102.

⁷ See USCIS Stabilization Act, Pub. L. 116-159 (Oct. 1, 2020).

⁸ See *id.* at sec. 4102(a)(codified as amended at 8 U.S.C. 1356(u)(4) (2020)).

resources needed to make the I-907 available for electronic filing independent of this rule. USCIS intends to implement expansion of premium processing availability of Forms I-539, I-765 and I-140 as soon as feasible. DHS plans on a phased implementation strategy to allow current premium processing revenue to pay for development and implementation costs associated with expanding availability of the service. DHS plans to implement expansion for certain categories of Forms I-539, I-765 and both of the new I-140 classifications in FY 2022. DHS estimates that it will not be able to expand premium processing to the additional categories of Forms I-539 and I-765 until FY 2025 due to the possibility that premium processing revenues do not yet exist to cover any potential costs associated with expanding premium processing to these additional categories without adversely affecting the processing times of other immigration benefit requests, as directed by Congress. This is explained in greater detail in the “Government Costs” section below. The projected implementation plan will allow current premium processing revenue to cover potential costs from the expedited processing of a large volume of new requests.

For the 10-year implementation period of the rule if year one is FY 2021, DHS estimates the annualized cost to be \$13 million discounted at 3 percent and \$12 million discounted at 7 percent. These costs are from the opportunity costs of time that newly eligible populations of Forms I-140, I-539, and I-765 will incur to request premium processing.

For the 10-year implementation period of the rule, DHS estimates the annualized transfer payments from the Form I-129 and Form I-140 fee-paying population, and from newly eligible classifications of Form I-140 petitioners, Form I-539 applicants and Form I-765 applicants to DHS to be \$743 million discounted at 3 percent and \$729 million discounted at 7 percent due to the increase in filing fees.

This final rule benefits petitioners of Form I-140 (EB-1, multinational executives and managers and EB-2, members of professions with advanced degrees or exceptional

ability seeking a national interest waiver) who were previously ineligible for premium processing, but will now be eligible following implementation of this final rule to request expedited review of their petitions. As a result, an adjudicative action would be taken more quickly. This change benefits businesses that previously would have had to wait longer to receive adjudicative action (such as a notice of approval) for an employee. It also benefits applicants of Form I-539 who will have the option to receive a decision on their request for a change of status or extension of stay sooner than before, which may alleviate concern about lapses in their nonimmigrant status. Applicants of Form I-765 would benefit through receipt of an adjudicative decision in a specified timeframe making those applicants eligible to work legally in the United States sooner than they would previously.

D. Summary of the Major Provisions of this Regulatory Action

This rule amends DHS premium processing regulations to codify those fees set by the USCIS Stabilization Act in section 286(u)(3)(A) of the INA, 8 U.S.C. 1356(u)(3)(A), as well as the preexisting timeframes for those immigration benefit requests that had been designated for premium processing as of August 1, 2020, and to establish new fees and processing timeframes for new immigration benefit requests, consistent with the conditions and eligibility requirements set forth by section 4102(b)(1) of the USCIS Stabilization Act. This rule further amends DHS premium processing regulations to codify the USCIS Stabilization Act's changes to the process for adjusting premium processing fees at section 286(u)(3)(C) of the INA, 8 U.S.C. 1356(u)(3)(C), according to which such adjustments are permitted on a biennial basis consistent with certain changes to the Consumer Price Index for All Urban Consumers (CPI-U).⁹ Finally, any additional changes made by this rule to revise DHS regulations at new 8 CFR 106.4 pertaining to

⁹ When making the biennial adjustment for premium processing fees pursuant to 8 U.S.C. 1356(u)(3)(C), USCIS will use the Bureau of Labor and Statistics CPI-U All Items as the index for the adjustment. <https://www.bls.gov/news.release/cpi.t01.htm> (last visited Jan. 7, 2022).

premium processing¹⁰ are made to be consistent with amendments made by the USCIS Stabilization Act.

II. Background

A. Current State of DHS Premium Processing Regulations

On November 14, 2019, DHS published the proposed rule, “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” in the *Federal Register* proposing to adjust certain immigration and naturalization benefit request fees charged by USCIS.¹¹ On August 3, 2020, DHS published the final rule with an effective date of October 2, 2020.¹² This effectively transferred DHS premium processing regulations from 8 CFR 103.7(b)(1)(i)(SS) and (e) to the new 8 CFR part 106, specifically 8 CFR 106.4, “Premium processing service.”

On September 29, 2020, the U.S. District Court for the Northern District of California granted a motion for a preliminary injunction and stay under 5 U.S.C. 705 of the 2020 Fee Schedule Final Rule in its entirety.¹³ On October 8, 2020, the U.S. District Court for the District of Columbia also granted a motion for a preliminary injunction and stay under 5 U.S.C. 705 of the 2020 Fee Schedule Final Rule.¹⁴ And, on January 29, 2021, DHS published a notification of preliminary injunction in the *Federal Register* to inform the public of the two preliminary injunctions of the 2020 Fee Schedule Final Rule.¹⁵ The Department continues to comply with the terms of those orders and is not enforcing the regulatory changes set out in the 2020 Fee Schedule Final Rule.

¹⁰ Those regulations also track the language that existed at 8 CFR 103.7(b)(1)(i)(SS) and (e) on October 1, 2020 (i.e., prior to the 2020 USCIS Fee Schedule Final Rule).

¹¹ See 84 FR 62280 (Nov. 14, 2019).

¹² U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 FR 46788 (Aug. 3, 2020) (2020 Fee Schedule Final Rule).

¹³ *Immigrant Legal Resource Center v. Wolf*, 491 F. Supp. 3d 520 (N.D. Cal. Sept. 29, 2020) (*ILRC v. Wolf*).

¹⁴ See *Northwest Immigrant Rights Project, et al., v. United States Citizenship and Immigration Services, et al.* 496 F. Supp. 3d 31 (D.D.C. Oct. 8, 2020) (*NWIRP v. USCIS*).

¹⁵ See 86 FR 7493 (Jan. 29, 2021).

Litigation in *ILRC v. Wolf* and *NWIRP v. USCIS* is currently stayed through February 14, 2022, to allow DHS to move forward through notice-and-comment rulemaking with a possible new USCIS fee schedule that would rescind and replace the changes made by the 2020 Fee Schedule Final Rule and establish new USCIS fees to recover USCIS operating costs.¹⁶

USCIS continued to accept the premium processing fees that were in place before October 2, 2020. On October 19, 2020, pursuant to the passage of the USCIS Stabilization Act, USCIS increased those premium processing fees that were in place at that time.¹⁷

Although DHS is enjoined from implementing or enforcing the 2020 Fee Schedule Final Rule and the rule has been stayed, the regulatory amendments established by the 2020 Fee Schedule Final Rule were incorporated into the Code of Federal Regulations (CFR) on October 2, 2020, by operation of the rule's publication in the *Federal Register* and as the rule instructed.¹⁸ In that regard, DHS has not implemented and is not administering the regulatory changes made by the 2020 Fee Schedule Final Rule, but rather continues to follow the premium processing regulations as provided in the versions of 8 CFR 103.7(b)(1)(i)(SS) and (e) as they existed until October 2, 2020. Nevertheless, 8 CFR part 106 and the other regulatory changes in the 2020 Fee Schedule Final Rule have been codified. Therefore, DHS is using this rule to revise all of the enjoined and stayed regulations pertaining to premium processing at 8 CFR 106.4. Notably, DHS will continue to calculate premium processing timeframes in

¹⁶ See Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions, U.S. Citizenship and Immigration Services Fee Schedule, available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1615-AC68> (last visited Feb. 8, 2022).

¹⁷ On October 16, 2020, USCIS issued a web alert notifying the public that USCIS would increase fees for premium processing, effective October 19, 2020, as required by the Continuing Appropriations Act, 2021 and Other Extensions Act, Pub. L. No. 116-159, signed into law on October 1, 2020. <https://www.uscis.gov/news/premium-processing-fee-increase-effective-oct-19-2020> (last updated Oct. 16, 2020).

¹⁸ See, e.g., 8 CFR part 106.

calendar days rather than business days, as it did before the 2020 Fee Schedule Final Rule and as it continues to do under the terms of the injunctions. Other than superseding the regulatory text set forth by the 2020 Fee Schedule Final Rule related to calculating premium processing timeframes in business days and reverting back to the established USCIS practice of calculating premium processing timeframes using calendar days, all other regulatory changes are based upon those changes set forth in the USCIS Stabilization Act.

Because the entirety of 8 CFR part 106, including 8 CFR 106.4, is enjoined and stayed, and the previous DHS premium processing regulations at 8 CFR 103.7(b)(1)(i)(SS) and (e) were removed, DHS will amend 8 CFR 106.4 by revising it in its entirety. This will avoid any confusion as to which DHS premium processing regulations are current and make it clear to the public that the DHS premium processing regulations are wholly contained in 8 CFR 106.4, available as a current reference, and being followed by DHS. Legal citations to the changes being made to DHS premium processing regulations in this preamble will cite to “8 CFR 106.4” to comport with the current location of the regulations in the CFR. However, because 8 CFR part 106 has been enjoined and stayed, has not been implemented, and is not being administered by USCIS, the standard of citing to the CFR print edition date may be inaccurate.

Therefore, in this rule, when DHS references the no longer existing (but still being followed) 8 CFR 103.7(b)(1)(i)(SS) and (e), DHS will refer to these regulations as they appeared in the CFR on October 1, 2020, and denote by reference to that date in any legal citation (e.g., 8 CFR 103.7(b)(1)(i)(SS) or (e) (Oct. 1, 2020)).

B. History of DHS Premium Processing Regulations

The District of Columbia Appropriations Act of 2001 added section 286(u) to the INA, 8 U.S.C. 1356(u), authorizing the collection of a \$1,000 “premium fee,” in addition to the regular filing fee, from persons seeking expedited processing of eligible

employment-based petitions and applications.¹⁹ Based upon this statutory authority, the former Immigration and Naturalization Service issued an interim rule establishing its premium processing service on June 1, 2001.²⁰ Premium processing allows filers to request 15-day processing of certain employment-based immigration benefit requests if they pay a premium processing fee in addition to the base filing fee and any other applicable fees.²¹ This premium processing fee cannot be waived.²² Premium processing is currently available for certain petitioners filing a Form I-129, Petition for a Nonimmigrant Worker, or a Form I-140, Immigrant Petition for Alien Workers, and seeking certain employment-based classifications. USCIS informs the public by announcements on its website of the dates of availability of premium processing service for specific petitions or applications.²³

The INA as amended by the District of Columbia Appropriations Act of 2001 provided that premium processing revenue shall be used to fund the cost of offering the service, as well as the cost of infrastructure improvements in adjudications and customer service processes. The INA as amended by the District of Columbia Appropriations Act of 2001 further provided USCIS with explicit authority to adjust the premium processing fee for inflation based on the CPI-U.²⁴ As such, DHS has periodically adjusted the premium processing fee by the percentage increase in inflation according to the CPI since premium processing's inception.²⁵ DHS first adjusted the premium processing fee from

¹⁹ See District of Columbia Appropriations Act of 2001, Pub. L. 106-553, tit. I, sec. 112, 114 Stat. 2762, 2762A-68 (Dec. 21, 2000).

²⁰ See 66 FR 29682 (Jun. 1, 2001).

²¹ See 8 CFR 103.7(b)(1)(i)(SS) and (e) (Oct. 1, 2020).

²² See 8 CFR 103.7(b)(1)(i)(SS)(3) (Oct. 1, 2020).

²³ See 8 CFR 103.7(b)(1)(i)(SS) and (e) (Oct. 1, 2020); see also USCIS, “How Do I Request Premium Processing?,” <https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing> (last updated Apr. 12, 2021).

²⁴ See INA sec. 286(u) (2000), 8 U.S.C. 1356(u) (2000); Pub. L. 106-553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A-68 (Dec. 21, 2000).

²⁵ The CPI is issued by the Department of Labor's Bureau of Labor Statistics (BLS) and can be found at <http://www.bls.gov/cpi> (last visited Jan. 7, 2022).

\$1,000 to \$1,225 in the 2010 USCIS fee rule.²⁶ Prior to the USCIS Stabilization Act, DHS last adjusted the premium processing fee to \$1,440 in December 2019.²⁷

C. The USCIS Stabilization Act

On October 1, 2020, the Continuing Appropriations Act, 2021 and Other Extensions Act was signed into law. That enactment contains the USCIS Stabilization Act.²⁸ The USCIS Stabilization Act amended section 286(u) of the INA, 8 U.S.C. 1356(u), by raising the premium processing fees for immigration benefit types designated for premium processing on or before August 1, 2020, and by expanding the benefit types that may be designated for premium processing service within prescribed limitations, among other changes.²⁹ These additional changes included redefining the process for adjusting premium processing fees by the CPI and expanding the permissible uses of

²⁶ See USCIS Fee Schedule; Final Rule, 75 FR 58962, 58978, 58988 (Sept. 24, 2010) (Between June 2001, when Congress established the fee, and June 2010, the CPI-U [All Items] increased by 22.45%. When that percentage increase is applied to the current premium processing fee of \$1,000, the adjusted premium processing fee is \$1,224 (\$1,225 when rounded to the nearest \$5.); 8 CFR 103.7(b)(1)(i)(RR) (effective Nov. 23, 2010, codified as amended at 8 CFR 103.7(b)(1)(i)(SS), 81 FR 73292, 73331 (Oct. 24, 2016)).

²⁷ See Adjustment to Premium Processing Fee; Final Rule, 84 FR 58303, (Oct. 31, 2019) (Between June 2001 and August 2019, the CPI-U [All Items] increased by 44.13 percent. When this percentage increase is applied to the June 2001 premium processing fee of \$1,000, the adjusted premium processing fee is \$1,441.34 (\$1,440 when rounded to the nearest \$5 increment.); 8 CFR 103.7(b)(1)(i)(SS) (effective Dec. 2, 2019).

²⁸ See USCIS Stabilization Act, Pub. L. 116-159 (Oct. 1, 2020).

²⁹ On May 23, 2006, USCIS issued an interim rule changing the premium processing regulations. See 71 FR 29571. Under that rule, USCIS would designate petitions and applications for premium processing by publication of notices in the *Federal Register*. That same day, USCIS designated Forms I-539 and I-765 for premium processing by a notice in the *Federal Register*. See 71 FR 29662. On September 24, 2010, USCIS changed the manner in which a form would be designated for premium processing. See 75 FR 58962. The 2010 rule provides that premium processing designation will be established through the USCIS website. Thus, for a form to be designated for premium processing it must be designated as such on the USCIS website. Forms I-539 and I-765 have not been designated for premium processing on the USCIS website since the 2010 rule became effective and so were not designated on August 1, 2020, nor did USCIS provide premium processing for Forms I-539 and I-765 on or before August 1, 2020. Thus, Forms I-539 and I-765 are not covered by INA sec. 286(u)(3)(A), 8 U.S.C. 1356(u)(3)(A) (relating to “immigration benefit types designated as eligible for premium processing on or before August 1, 2020.”), as enacted by the USCIS Stabilization Act. USCIS interprets INA sec. 286(u)(3)(A), 8 U.S.C. 1356(u)(3)(A), to refer to immigration benefit requests that were designated pursuant to the premium processing regulations in effect at the time of the statute’s enactment. USCIS believes this interpretation is supported by the fact that Congress specifically provided an appropriate fee and processing timeframe for Forms I-539 and I-765 in sec. 4102(b)(1) of the USCIS Stabilization Act, which provides an exception to 5 U.S.C. 553 in establishing an initial fee for those forms. Additionally, because sec. 4102(b)(1) of the USCIS Stabilization Act only applies to INA sec. 286(u)(3)(B) and to those immigration benefit requests designated for premium processing after August 1, 2020, it is clear that Congress intended for Forms I-539 and I-765 to fall under those immigration benefit requests described in INA sec. 286(u)(3)(B) and not INA sec. 286(u)(3)(A).

revenue from the collection of premium processing fees, including improvements to adjudications process infrastructure, responses to adjudication demands, and to otherwise offset the cost of providing adjudication and naturalization services.

On October 16, 2020, USCIS announced it would increase the fees for premium processing, as required by the USCIS Stabilization Act, effective October 19, 2020.³⁰ As of that date, the fee for Form I-907, Request for Premium Processing Service, increased from \$1,440 to \$2,500 for all immigration benefit requests that were designated for premium processing as of August 1, 2020, with the exception that the premium processing fee for petitioners filing Form I-129, Petition for a Nonimmigrant Worker, requesting H-2B or R-1 nonimmigrant status increased from \$1,440 to \$1,500. USCIS further announced that, while the USCIS Stabilization Act gave USCIS the ability to expand premium processing to additional forms and immigration benefit requests, USCIS was not yet taking such action and that any expansion of premium processing to other forms would be implemented as provided in the legislation.³¹

Through this rulemaking, DHS is amending DHS premium processing regulations to codify those fees set by the USCIS Stabilization Act through enactment of section 286(u)(3)(A) of the INA, 8 U.S.C. 1356(u)(3)(A), as well as the preexisting timeframes for those immigration benefit requests that were designated for premium processing as of August 1, 2020, and to establish new fees and processing timeframes for new immigration benefit requests, consistent with the conditions and eligibility requirements set forth by section 4102(b)(1) of the USCIS Stabilization Act. DHS is also amending DHS premium processing regulations to codify the USCIS Stabilization Act's changes made at section 286(u)(3)(C) of the INA, 8 U.S.C. 1356(u)(3)(C), to the process for

³⁰ See USCIS, Premium Processing Fee Increase Effective Oct. 19, 2020, <https://www.uscis.gov/news/premium-processing-fee-increase-effective-oct-19-2020> (last updated Oct. 16, 2020).

³¹ *Id.*

adjusting premium processing fees, according to which such adjustments are permitted on a biennial basis consistent with certain changes to the CPI-U.

III. Discussion of the Changes

Prior to the USCIS Stabilization Act, premium processing provided expedited processing for certain designated classifications that are requested on Form I-129 and Form I-140.³² USCIS had the authority to designate the classifications of employment-based immigration benefit requests that were eligible for premium processing by announcing on its official internet website (<http://www.uscis.gov>) those immigration benefit requests for which premium processing was available, the dates upon which such availability commenced or ended, and any conditions that applied. Also prior to the USCIS Stabilization Act, the fee and processing timeframes for premium processing were uniform for all designated immigration benefit requests. Specifically, USCIS guaranteed processing for these requests within 15 days to petitioners who chose to pay the additional fee to request this service. The 15-day period would generally begin when USCIS properly received the correct version of Form I-907, Request for Premium Processing Service, with fee, at the correct filing address. Within the 15-day period, USCIS would issue either an approval notice, denial notice, notice of intent to deny, or request for evidence, or open an investigation for fraud or misrepresentation. If USCIS did not take any of the above actions within the 15-day period, USCIS would refund the premium processing fee. If the benefit required the submission of additional evidence or a response to a notice of intent to deny, a new 15-day period would begin when USCIS received a complete response to the request for evidence or notice of intent to deny. The premium processing fee was required to be paid in addition to, and in a separate

³² A list of immigration benefit requests available for premium processing and when those immigration benefit requests became available for premium processing can be found on USCIS's webpage, "How Do I Request Premium Processing?," <https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing> (last updated Apr. 12, 2021).

remittance from, other filing fees, and could not be waived. Finally, the premium processing fee amount could be adjusted annually by notice in the *Federal Register* based on inflation according to the CPI.

While leaving in place the general concept and framework for premium processing that existed prior to its enactment, the USCIS Stabilization Act made significant changes to the INA, amending significant aspects of premium processing that had previously been established by regulation. While maintaining DHS's authority to set reasonable conditions or limitations on premium processing, the USCIS Stabilization Act expanded the immigration benefit types that can be designated for premium processing, to wit: applications to change or extend nonimmigrant status and applications for employment authorization (generally on Form I-539, Application to Extend/Change Nonimmigrant Status, and Form I-765, Application for Employment Authorization, respectively) as well as any other immigration benefit type that DHS deems appropriate for premium processing.³³ This expansion of premium processing to other immigration benefit types generally requires that the initial premium processing fee be established by regulation, with a detailed methodology supporting the proposed premium processing fee amount.³⁴ However, the USCIS Stabilization Act did identify specific immigration benefit requests to which premium processing could be expanded by final rule without regard to the provisions of 5 U.S.C. 553 as long as the established premium fee and required processing timeframe are consistent with the limitations described therein.³⁵

These immigration benefit requests and applicable fees and timeframes are:

- Form I-140 requesting EB-1 immigrant classification as a multinational executive or manager or EB-2 immigrant classification as a member of

³³ See USCIS Stabilization Act, Pub. L. 116-159 (Oct. 1, 2020).

³⁴ See *id.* at sec. 4102(a)(codified as amended at 8 U.S.C. 1356(u)(3)(B) (2020)).

³⁵ See *id.* at sec. 4102(b) (Oct. 1, 2020).

professions with advanced degrees or exceptional ability seeking a national interest waiver (NIW). Fee: \$2,500. Timeframe: 45 days;

- Form I-539 requesting a change of status to F-1, F-2, J-1, J-2, M-1, or M-2 nonimmigrant status or a change of status to or extension of stay in E-1, E-2, E-3, H-4, L-2, O-3, P-4, or R-2 nonimmigrant status. Fee: \$1,750.

Timeframe: 30 days; and

- Form I-765 requesting employment authorization. Fee: \$1,500.

Timeframe: 30 days.³⁶

The primary purpose of this rule is to add these specific benefit types as those designated for premium processing in DHS regulations with both a premium processing fee and required processing timeframe, consistent with the exemption from 5 U.S.C. 553, while further reconciling the premium processing regulations with the other changes made by the USCIS Stabilization Act. In the Executive Orders 12866 and 13563 section of this rule, DHS estimates the number of newly eligible I-140 petitioners, I-539 applicants, or I-765 applicants that may choose to submit a premium processing request. However, as further discussed in section IV.B of this rule, it is difficult for DHS to determine the amount of time and resources specifically needed to accommodate these new requests for premium processing. Therefore, DHS has set the premium processing fees and timeframes for the newly eligible immigration benefit requests to be consistent with the fees and maximum processing timeframes set forth by Congress in section 4102(b)(1) of the USCIS Stabilization Act. As provided by section 4102(b)(2) of the USCIS Stabilization Act and as codified in the new 8 CFR 106.4(f)(2)(ii), the premium processing timeframe for the immigration benefit requests identified in section 4102(b) of the USCIS Stabilization Act will commence on the date that all prerequisites for adjudication, the form prescribed by USCIS, and fee(s) are received by USCIS.

³⁶*Id.*

DHS is not codifying a definition of the phrase “prerequisites for adjudication” in this rule and will determine when the timeframe begins based on the benefit request and what is required to fully adjudicate it, consistent with otherwise applicable regulations. USCIS has been unable to offer premium or expedited services for many of its adjudication and naturalization services because of the difficulty in determining the appropriate fee, staffing levels, time period for adjudication, and other parameters. The USCIS Stabilization Act recognized that it is the requestor’s responsibility to provide a complete request before premium processing can begin and that there is inherent ambiguity in defining the appropriate timeframe. DHS interprets “prerequisites for adjudication” in section 4102(b) to at least require a complete, fully executed form as prescribed and required by 8 CFR 1.2 and 8 CFR 103.2(a)(7), completed in accordance with the form instructions as required by 8 CFR 103.2(a)(1), and other filing requirements as may be provided in the applicable regulations for the specific benefit request, including receiving all necessary evidence and information from interviews, biometrics submission, and background checks. USCIS may specify additional prerequisites that determine when the timeframe begins when it announces those requests for which premium processing may be requested and any conditions that may apply under 8 CFR 106.4(g).

The USCIS Stabilization Act also established distinct premium processing fees and the authority to establish distinct premium processing timeframes based upon the specific immigration benefit request.³⁷ With respect to an immigration benefit type designated for premium processing before August 1, 2020, the premium fee was set at \$2,500, except that the premium fee for petitioners filing Form I-129 requesting H-2B or R-1 nonimmigrant status was set at \$1,500.³⁸ This rule codifies these changes by

³⁷ See *id.* at sec. 4102(b).

³⁸ See *id.* at sec. 4102(a)(codified as amended at 8 U.S.C. 1356(u)(3)(A) (2020)).

specifically defining the premium processing fee and the premium processing timeframe for those immigration benefit types that were designated for premium processing before August 1, 2020. As maintained in the new 8 CFR 106.4(f)(2)(i), the premium processing timeframe for these benefits requests will commence on the date that the form prescribed by USCIS and fee(s) are received by USCIS.

The USCIS Stabilization Act also amended the INA by adding section 286(u)(3)(C), 8 U.S.C. 1356(u)(3)(C), which adjusts the frequency and the manner in which USCIS may periodically adjust the fees for premium processing.³⁹ The statute now provides that the Secretary may adjust these fees on a biennial basis by the percentage (if any) of the CPI-U⁴⁰ for the month of June preceding the date on which such adjustment takes effect exceeds the CPI-U for the same month of the second preceding calendar year.⁴¹ Adjustments to the premium processing fees made in this manner are specifically exempted from notice-and-comment rulemaking.⁴² These changes have been codified at new 8 CFR 106.4(d). DHS will maintain its practice of announcing adjustments to the premium processing fees that are not subject to notice and comment (and made pursuant to section 286(u)(3)(C) of the INA, 8 USC 1356(u)(3)(C)) through publication in the *Federal Register*.⁴³

The premium processing regulations require USCIS to communicate which immigrant benefit requests are available for premium processing, the dates upon which availability commences and ends and any conditions that may apply to seeking a request for premium processing.⁴⁴ USCIS will maintain this practice. In order to provide USCIS with the flexibility to be adequately responsive to changing customer demands and resource constraints, new 8 CFR 106.4(g) draws on the previous process that USCIS used

³⁹ See *id.* at sec. 4102(a)(codified as amended at 8 U.S.C. 1356(u)(3)(C) (2020)).

⁴⁰ See *supra* note 9.

⁴¹ See USCIS Stabilization Act, Pub. L. 116-159 (Oct. 1, 2020).

⁴² *Id.*

⁴³ See 8 CFR 103.7(b)(1)(i)(SS)(2) (Oct. 1, 2020); See new 8 CFR 106.4(d).

⁴⁴ See 8 CFR 103.7(e)(3)(ii) (Oct. 1, 2020).

to announce when premium processing is available and may be requested.⁴⁵ In particular, USCIS will announce by its official website those requests for which premium processing of designated benefits is available, the dates when such availability commences or ends, and any conditions that may apply.⁴⁶ Such conditions may include establishing a prerequisite to eligibility for the underlying immigration benefit request, as is the case currently where USCIS will only accept a request for premium processing on a petition for temporary nonimmigrant religious worker (R-1 visa) after there has been a successful onsite inspection.⁴⁷ Such conditions may also include establishing periods of pendency or specific filing dates necessary for phasing-in expanded premium processing for immigration benefit requests or delaying receipt dates for those immigration benefit requests subject to a numerical limitation (or cap) to determine whether a random selection process (or lottery) may be necessary and to complete such process when required. The use of such prerequisites and conditions is consistent with established USCIS premium processing practices as they existed prior to the USCIS Stabilization Act.

Consistent with the USCIS Stabilization Act, new 8 CFR 106.4(g) further clarifies that USCIS may suspend the availability of premium processing for certain immigration benefit requests if circumstances prevent the agency from being able to complete a significant number of such requests within the applicable processing timeframe.⁴⁸ New 8 CFR 106.4(g) also makes clear that the designation of a benefit request for premium processing and establishing the corresponding premium processing fees and timeframes, does not in itself permit a request for premium processing to be filed for an immigration benefit request, but that USCIS must also make premium processing available for each

⁴⁵ See 8 CFR 103.7(e)(3) (Oct. 1, 2020).

⁴⁶ See new 8 CFR 106.4(g)(1).

⁴⁷ See I-907, Request for Premium Processing Service – Special Instructions, <https://www.uscis.gov/i-907> (last updated Sep. 30, 2021).

⁴⁸ See USCIS Stabilization Act, sec. 4102(a) (codified as amended at 8 U.S.C. 1356(u)(5)(A) (2020)), Pub. L. 116-159 (Oct. 1, 2020). See new 8 CFR 206.4(g)(2).

immigration benefit request type. By identifying and establishing those immigration benefit request types designated for premium processing in this rule and the corresponding fees and processing timeframes, consistent with the USCIS Stabilization Act, this rule will allow USCIS to offer and suspend premium processing for designated immigration benefit request types in reaction to customer needs and USCIS workload, when there are circumstances that prevent USCIS from completing the processing of a significant number of premium processing requests within the required timeframes and in accordance with the procedures codified at new 8 CFR 106.4(g).

Relatedly, the USCIS Stabilization Act requires that when DHS implements the availability of premium processing, or expands premium processing to new immigration benefit request types, DHS must ensure that such implementation or expansion does not result in an increase in processing times for immigration benefit requests not designated for premium processing or an increase in regular processing of immigration benefit requests so designated.⁴⁹ Before DHS can implement the expansion of premium processing provided in this rule, DHS must raise sufficient funds to ensure it has the staffing and information technology (IT) resources in place to expand premium processing availability to avoid increasing non-premium processing related processing times. The current processing times for the immigration benefit requests newly designated for premium processing exceed the proposed premium processing timeframes by many months as expected.

DHS generally cannot reallocate staff to adjudicate these immigration benefit requests without adversely affecting processing times for other non-premium processing related immigration benefit requests. Therefore, DHS must hire and train new staff with revenue from current premium processing requests in order to expand expedited adjudication of premium processing consistent with the statutory requirement. Delayed

⁴⁹ See USCIS Stabilization Act, sec. 4102(c), Pub. L. 116-159 (Oct. 1, 2020).

implementation will allow USCIS to maintain a minimum premium revenue carryover balance. USCIS will use the carryover balance to ensure fiscal stability and fund infrastructure and process improvements, such as the expansion of premium services. For these reasons and circumstances, DHS will suspend the availability of premium processing for those immigration benefit requests newly designated for premium processing by this rule and will not make those immigration benefit requests newly designated by this rule immediately available for premium processing upon the effective date of this rule.

In the 2020 Fee Schedule NPRM, DHS changed the way it calculated the 15-day premium processing clock from counting calendar days to counting business days.⁵⁰ DHS explained it was necessary to make this change, because of the frequency by which USCIS found it necessary to suspend premium processing for certain categories of employment-based petitions as a result of having to reassign officers to process long-pending non-premium filed petitions and to prevent a lapse in employment authorization for beneficiaries of Form I-129 extension of stay petitions. There were also instances when USCIS could not meet the 15-day premium processing requirement due to surges in petitions accompanied by premium processing requests, which resulted in USCIS having to refund the premium processing fees and incurring additional costs as a result.⁵¹

In this rule, DHS is removing any reference to calculating premium processing timeframes in business days that were finalized in the 2020 Fee Schedule Final Rule. Following issuance of this rule, DHS intends to continue to calculate premium processing timeframes by counting calendar days. As previously discussed, the 2020 Fee Schedule Final Rule is enjoined and stayed, and the regulations as codified in 8 CFR 106.4 are not being administered by USCIS.

⁵⁰ See 8 CFR 106.4(a)

⁵¹ See U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 FR 62280, 62311-12 (Nov. 14, 2019) (2020 Fee Schedule NPRM).

Because the litigation in *ILRC v Wolf* and *NWIRP v USCIS* is currently stayed, and because DHS plans to replace the regulations codified by the 2020 Fee Schedule Final Rule with a new rule, the regulations currently at 8 CFR 106.4 have never been implemented. USCIS currently is not calculating premium processing timeframes in business days, consistent with the terms of the injunctions and stays. Rather, USCIS is calculating premium processing timeframes, as it has always done, by counting calendar days. By removing the reference to business days in the premium processing regulations, the premium processing regulations will be clear and consistent with current practices and requirements and not be a source of confusion to the public.⁵²

IV. Statutory and Regulatory Requirements

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to issue a proposed rule before issuing a final rule, subject to certain exceptions.⁵³ As explained below, the changes made in this rule do not require advance notice and opportunity for public comment, because the changes are (1) exempt from the requirements of 5 U.S.C. 553 by section 4102(b)(1) of the USCIS Stabilization Act, (2) exempt from public comment under 5 U.S.C. 553(b)(B) because they merely restate existing law, or (3) exempt as procedural under 5 U.S.C. 553(b)(A).

(1) Statutory Exemption from the Requirements of 5 U.S.C. 553

The USCIS Stabilization Act has exempted DHS from the requirements of 5 U.S.C. 553 when USCIS establishes fees that are consistent with section 4102(b) of the USCIS Stabilization Act. This exemption allows DHS to establish fees consistent with

⁵² Counting premium processing timeframes by calendar days is also consistent with the definition of “day” in 8 CFR 1.2, which provides that when computing the period of time for taking any action [in chapter I of title 8 of the CFR] including the taking of an appeal, [it] shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period computed falls on a Saturday, Sunday, or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

⁵³ See 5 U.S.C. 553(b).

section 4102(b) of the USCIS Stabilization Act by final rule and does not require notice-and-comment rulemaking.⁵⁴

(2) Statutorily Required Changes

The USCIS Stabilization Act made statutory changes to section 286(u) of the INA, 8 U.S.C. 1356(u).⁵⁵ DHS has good cause to bypass notice-and-comment procedures when incorporating those nondiscretionary statutory changes made by the USCIS Stabilization Act to section 286(u) of the INA, 8 U.S.C. 1356(u), through conforming changes to the DHS premium processing regulations via this rulemaking. When regulations merely restate the statute they implement (i.e., when the rule does not change the established legal order), the APA does not require the agency to use notice-and-comment procedures. *See* 5 U.S.C. 553(b)(B); *Gray Panthers Advocacy Committee v. Sullivan*, 936 F.2d 1284, 1291 (D.C. Cir. 1991); *see also United States v. Cain*, 583 F.3d 408, 420 (6th Cir. 2009) (contrasting legislative rules, which require notice-and-comment procedures, “with regulations that merely restate or interpret statutory obligations,” which do not); *Komjathy v. Nat. Trans. Safety Bd.*, 832 F.2d 1294, 1296 (D.C. Cir. 1987) (when a rule “does no more than repeat, virtually verbatim, the statutory grant of authority” notice-and-comment procedures are not required). This exception to notice and comment applies to the portions of this rule that merely restate the fees for those immigration benefit types designated for premium processing on or before August 1, 2020 and the biennial fee adjustment.⁵⁶ This exception also applies to the portions of this rule that codify the clarification provided in section 4102(b)(2) of the USCIS Stabilization Act regarding when processing timeframes will commence for those benefit request types described in section 4102(b)(1) of the USCIS Stabilization Act and the manner in which

⁵⁴ *See* USCIS Stabilization Act, sec. 4102(b)(1).

⁵⁵ *See id.* at sec. 4102(a).

⁵⁶ *See* USCIS Stabilization Act, sec. 4102(a); new 8 CFR 106.4(c) and (d).

USCIS may suspend premium processing services now codified in section 286(u)(5)(A) of the INA, 8 U.S.C. 1356(u)(5)(A).⁵⁷

(3) Rule of Procedure

This rule is also exempt, in its entirety, from the notice-and-comment requirements of 5 U.S.C. 553, because the rule's provisions are fundamentally procedural in nature. *See* 5 U.S.C. 553(b)(A). *See generally Mendoza v. Perez*, 754 F.3d 1002, 1023 (D.C. Cir. 2014) ("Procedural rules do not themselves alter the rights or interests of parties, although they may alter the manner in which the parties present themselves or their viewpoints to the agency. The distinction between substantive and procedural rules is one of degree depending upon whether the substantive effect is sufficiently grave so that notice and comment are needed to safeguard the policies underlying the APA." (cleaned up)). This rule describes the process and the procedures that USCIS will employ to make premium processing available to the public. This rule explains that there is premium processing for certain immigration benefit requests, how to submit a request for premium processing, those immigration benefits designated for premium processing and the associated fees, how fees will be adjusted, processing timeframes (including the reversion to calendar days), processing requirements and when fees will be refunded, and how USCIS will communicate the availability of premium processing to the public. This rule communicates the mechanics and processes that USCIS has deemed to be an efficient and practical way to manage and offer a service to those willing to pay a premium to have their immigration benefit requests processed in a more expeditious manner.

B. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

⁵⁷ *See* new 8 CFR 106.4(f)(2)(ii) and (g).

Executive Order (E.O.) 12866 and E.O. 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and to the extent permitted by law, to proceed if the benefits justify the costs. They also direct agencies to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). In particular, E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs (OIRA), within the Office of Management and Budget (OMB), has designated this final rule an economically significant regulatory action under sec. 3(f)(1) of E.O. 12866. Accordingly, OIRA has reviewed this regulation.

1) Summary

The Continuing Appropriations Act, 2021 and Other Extensions Act, signed into law on October 1, 2020, contained the Emergency Stopgap USCIS Stabilization Act, which set new fees for premium processing of immigration benefit requests that had been designated for premium processing as of August 1, 2020, and expanded USCIS authority to establish and collect new premium processing fees and to use those additional funds for expanded purposes. The purpose of this rulemaking is to amend DHS premium processing regulations for previously designated benefit requests to codify those fees set by the USCIS Stabilization Act in section 286(u)(3)(A) of the INA, 8 U.S.C. 1356(u)(3)(A), and to establish new immigration benefit requests designated for premium processing under section 286(u)(3)(B) of the INA, 8 U.S.C. 1356(u)(3)(B), consistent with those conditions and eligibility requirements set forth by section 4102(b)(1) of the USCIS Stabilization Act.

While DHS is able to assess the costs and benefits of premium processing for the forms and classifications for which it is currently available, it is more difficult to assess when DHS will be able to expand the availability of premium processing to all of the

newly designated immigration benefit request types. Due to the statutory requirement that the expansion of availability of premium processing should not result in increased processing times for immigration benefit requests not designated for premium processing or an increase in regular processing of immigration benefit requests so designated, DHS must first raise sufficient funds to ensure it has the staffing and information technology (IT) resources to expand premium processing availability to avoid such an increase to any processing times. The current (non-premium) processing times for the newly designated immigration benefit requests exceed the proposed premium processing timeframes by many months, as expected.

DHS generally is unable to reallocate staff to adjudicate these immigration benefit requests without adversely affecting processing times for other immigration benefit requests. Therefore, DHS must hire and train new staff with revenue from current premium processing requests in order to expand expedited adjudication of premium processing consistent with the statutory requirement that other processing times not be adversely affected.

Furthermore, Section 3401 of the Stabilization Act authorizes USCIS to use fee revenue for the following, competing purposes: to provide premium processing services to requestors, to make infrastructure improvements in adjudications processes and the provision of information and services to immigration and naturalization benefit requestors, to respond to adjudication demands, including by reducing the number of pending immigration and naturalization benefit requests, and to otherwise offset the cost of providing adjudication and naturalization services. Prior to expansion, any revenues in excess of costs generated by premium processing will be used to support other authorized uses. Section 3402 of the Stabilization Act additionally directs USCIS to provide a 5-year plan for improvements in electronic filing, electronic payment, and electronic correspondence resulting in improved processing times for all immigration and

naturalization benefit requests. In accordance with these authorizations and directives, DHS has prioritized and is in the process of expanding electronic filing for all applications and benefit requests. Some of the immigration benefit requests newly designated for premium processing are already filed electronically.⁵⁸

The expansion of electronic filing to application and benefit requests is a prerequisite so that the premium processing form, Form I-907, (which is not currently available electronically) could be filed electronically with the benefit request form for which premium processing is being requested. USCIS plans to encumber additional IT resources needed to make the I-907 available for electronic filing independent of this rule. USCIS intends to implement expansion of premium processing availability of Forms I-539, I-765 and I-140 as soon as feasible. DHS plans on a phased implementation strategy to allow current premium processing revenue to pay for development and implementation costs associated with expanding availability of the service. DHS plans to implement expansion for certain categories of Forms I-539, I-765 and both of the new I-140 classifications in FY 2022. DHS estimates that it will not be able to expand premium processing to the additional categories of Forms I-539 and I-765 until FY 2025 due to the possibility that premium processing revenues do not yet exist to cover any potential costs of hiring additional staff to expand premium processing to these additional categories without adversely affecting other benefit's processing times, as directed by Congress. This is explained in greater detail in the “Government Costs” section below. The projected implementation plan will allow current premium processing revenue to cover potential costs from the expedited processing of a large volume of new requests.

⁵⁸ USCIS Forms Currently Available to File Online: <https://www.uscis.gov/file-online/forms-available-to-file-online> (last updated Dec. 21, 2021). Of the forms impacted by this rule, USCIS already provides electronic filing of certain Forms I-539 and I-765. However, Form I-907 is not currently available for electronic filing.

For the 10-year implementation period of the rule if year one is FY 2021, DHS estimates the annualized cost to be \$13 million discounted at 3 percent and \$12 million discounted at 7 percent. These costs are from the opportunity costs of time that newly eligible populations of Forms I-140, I-539, and I-765 will incur to request premium processing.

For the 10-year implementation period of the rule, DHS estimates the annualized transfer payments from the Form I-129 and Form I-140 fee-paying population, and from newly eligible classifications of Form I-140 petitioners, Form I-539 applicants and Form I-765 applicants to DHS to be \$743 million discounted at 3 percent and \$729 million discounted at 7 percent due to the increase in filing fees.

This final rule benefits petitioners of Form I-140 (EB-1, multinational executives and managers and EB-2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver) who were previously ineligible for premium processing to receive a quicker adjudication. This change benefits businesses that previously would have had to wait longer to receive a decision (such as a notice of approval) for an employee. It also benefits applicants of Form I-539 who will have the option to receive a decision on their request for a change of status or extension of stay sooner than before, which may alleviate concern about lapses in their nonimmigrant status. Applicants of Form I-765 would benefit through receipt of an adjudicative decision in a specified timeframe making those applicants eligible to work legally in the United States sooner than they would have previously.

Table 1 provides a more detailed summary of the final rule provisions and their impacts.

Table 1. Summary of Provisions and Impacts of the Final Rule			
Final Rule Provisions	Description of Change to Provision	Estimated Costs/Transfers of Provisions	Estimated Benefits of Provisions

<ul style="list-style-type: none"> Codify fee increases from the Continuing Appropriations Act, 2021 and Other Extensions Act. 	<ul style="list-style-type: none"> The Continuing Appropriations Act, 2021 and Other Extensions Act, expanded USCIS authority to establish and collect new premium processing fees and to use those additional funds for expanded purposes. Codifies existing premium processing fees and processing timeframes for certain classifications requested on Form I-129 classifications (E-1, E-2, E-3, H-1B, H-3, L-1A, L-1B, LZ, O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, P-3S, Q-1, TN-1, and TN-2) and Form I-140 classifications: EB-1 Aliens of extraordinary ability, EB-1 Outstanding professors and researchers, EB-2 Members of professions with advanced degrees or exceptional ability not seeking a National Interest Waiver, EB-3 Skilled workers, EB-3 Professionals, EB-3 Workers other than skilled workers and professionals (\$2,500/15 days). Codifies existing premium processing fees and processing timeframes for certain classifications requested on Form I-129 classifications H-2B, R-1 (\$1,500/15 days) 	<p>Quantitative: Petitioners -</p> <ul style="list-style-type: none"> Annual transfer payments of \$306,448,000 from Form I-129 petitioners to DHS from an increase in filing fees in FY 2021. Annual estimated transfer payments of \$295,113,180 from Form I-129 petitioners to DHS from a projected increase in filing fees in FY 2022 through FY 2030. Annual transfer payments of \$103,111,500 from Form I-140 petitioners to DHS from an increase in filing fees in FY 2021. Annual estimated transfer payments of \$82,872,920 from Form I-140 petitioners to DHS from a projected increase in filing fees in FY 2022 through FY 2030. <p>DHS/USCIS -</p> <ul style="list-style-type: none"> None. <p>Qualitative: Petitioners –</p> <ul style="list-style-type: none"> None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> None. 	<p>Quantitative: Petitioners -</p> <ul style="list-style-type: none"> None. <p>DHS/USCIS -</p> <ul style="list-style-type: none"> None. <p>Qualitative: Petitioners –</p> <ul style="list-style-type: none"> None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> The primary benefit of these provisions to DHS is the opportunity to increase revenue in order to make infrastructure improvements and processing times, among other purposes.
<ul style="list-style-type: none"> Expansion of premium processing to Form I-140 Classifications: E13, E21 (NIW). 	<ul style="list-style-type: none"> Establishes a \$2,500 premium processing fee and 45-day processing timeframe for newly eligible Form I-140 Classifications: EB-1, multinational executives and managers, and EB-2, 	<p>Quantitative: Petitioners -</p> <ul style="list-style-type: none"> Cost to petitioners completing and filing Form I-907 requests will be approximately \$2,934,568 annually in FY 	<p>Quantitative: Petitioners -</p> <ul style="list-style-type: none"> None. <p>DHS/USCIS -</p> <ul style="list-style-type: none"> None. <p>Qualitative: Petitioners –</p>

	<p>members of professions with advanced degrees or exceptional ability seeking a national interest waiver.</p>	<p>2022 through FY 2030.</p> <ul style="list-style-type: none"> Annual transfer payments of \$94,427,500 from newly eligible Form I-140 petitioners to DHS due to filing fees in FY 2022 through FY 2030. <p>DHS/USCIS -</p> <ul style="list-style-type: none"> None. <p>Qualitative: Petitioners –</p> <ul style="list-style-type: none"> None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> None. 	<ul style="list-style-type: none"> Petitioners requesting benefit requests that were not previously designated for premium processing may now be able to obtain quicker adjudicative action. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> The primary benefit of this provision to DHS is the opportunity to increase revenue in order to make infrastructure improvements and processing times, among other purposes.
<ul style="list-style-type: none"> Expansion of premium processing to Form I-539 Classifications: E-1, E-2, E-3, F-1, F-2, H-4, J-1, J-2, L-2, M-1, M-2, O-3, P-4, R-2. 	<ul style="list-style-type: none"> Establishes a \$1,750 premium processing fee and 30-day processing timeframe for newly eligible Form I-539 Classifications: E-1, E-2, E-3, F-1, F-2, H-4, J-1, J-2, L-2, M-1, M-2, O-3, P-4, R-2. 	<p>Quantitative: Applicants –</p> <ul style="list-style-type: none"> Costs to F-1, F-2, J-1, J-2, M-1, M-2 classification applicants completing and filing Form I-907 requests are estimated to be \$296,648 annually starting in FY 2022 through FY 2030. Costs to E-1, E-2, E-3, L-2, H-4, O-3, P-4, R-2 classification applicants completing and filing Form I-907 requests are estimated to be \$3,048,488 annually starting in FY 2025 through FY 2030. Total Costs to all Form I-539 applicants completing and filing Form I-907 requests are estimated to be \$3,345,136 annually starting in FY 2025 through FY 2030. 	<p>Quantitative: Applicants –</p> <ul style="list-style-type: none"> None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> None. <p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> Applicants requesting benefit requests that were not previously designated for premium processing may now be able to obtain quicker adjudicative action. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> The primary benefit of this provision to DHS is the opportunity to make infrastructure improvements and processing times, among other purposes.

		<ul style="list-style-type: none"> • Annual estimated transfer payments of \$17,939,250 from Form I-539 F-1, F-2, J-1, J-2, M-1, M-2 classification applicants completing and filing Form I-907 requests to DHS from filing fees in FY 2022 through FY 2030. • Annual estimated transfer payments of \$110,572,000 from Form I-539 E-1, E-2, E-3, L-2, H-4, O-3, P-4, R-2 classification applicants completing and filing Form I-907 requests to DHS from filing fees starting in FY 2025 through FY 2030. • Total transfers from all Form I-539 applicants completing and filing Form I-907 requests are estimated to be \$128,511,250 annually starting in FY 2025 through FY 2030. <p>DHS/USCIS -</p> <ul style="list-style-type: none"> • None. <p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> • None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • This final rule will require USCIS enhancements to handle the projected volumes of expedited requests without adverse impact to 	
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		other processing times.	
<ul style="list-style-type: none"> Expansion of premium processing to Form I-765 Categories. 	<ul style="list-style-type: none"> Establishes a \$1,500 premium processing fee and 30-day processing timeframe for newly eligible Form I-765 Categories. 	<p>Quantitative: Applicants –</p> <ul style="list-style-type: none"> Costs to some applicants completing and filing Form I-907 requests are expected to be approximately \$6,486,289 annually starting in FY 2022 through FY 2030 for certain classifications. Costs to other applicants completing and filing Form I-907 requests are expected to be approximately \$3,048,488 annually starting in FY 2025 through FY 2030 for certain classifications. Total Costs to all Form I-765 applicants completing and filing Form I-907 requests are estimated to be \$9,534,777 annually starting in FY 2025 through FY 2030. Annual estimated transfer payments of \$173,370,000 from some applicants completing and filing Form I-907 requests to DHS from filing fees in FY 2022 through FY 2030. Annual estimated transfer payments of \$81,483,000 from some 	<p>Quantitative: Applicants –</p> <ul style="list-style-type: none"> None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> None. <p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> Applicants requesting benefit requests that were not previously designated for premium processing will now be able to obtain quicker adjudicative action making those applicants eligible to work legally in the United States sooner than they would have previously. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> The primary benefit of this provision to DHS is the opportunity to make infrastructure improvements and processing times, among other purposes.

		<p>applicants completing and filing Form I-907 requests to DHS from filing fees starting in FY 2025 through FY 2030.</p> <ul style="list-style-type: none"> • Total transfers from all Form I-765 applicants completing and filing Form I-907 requests are estimated to be \$254,853,000 annually starting in FY 2025 through FY 2030. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • None. <p>Qualitative: Applicants –</p> <ul style="list-style-type: none"> • None. <p>DHS/USCIS –</p> <ul style="list-style-type: none"> • This final rule will require USCIS enhancements to handle the projected volumes of expedited requests without adverse impact to other processing times. 	
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In addition to the impacts summarized above, and as required by OMB Circular A-4, Table 2 presents the prepared accounting statement showing the costs and benefits to each individual affected by this final rule.⁵⁹

⁵⁹ White House, OMB, *Circular A-4* (Sept. 17, 2003), available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf> (last viewed June 1, 2021).

Table 2. OMB A-4 Accounting Statement (\$ millions, FY 2020)
Time Period: FY 2021 through FY 2030

Category	Primary Estimate	Minimum Estimate	Maximum Estimate	Source Citation
BENEFITS				
Monetized Benefits	N/A			Regulatory Impact Analysis (“RIA”)
Annualized quantified, but unmonetized, benefits	N/A	N/A	N/A	RIA
Unquantified Benefits	<p>The USCIS Stabilization Act provides specific purposes that the premium processing fees can be used for. Consistent with those permissible purposes, the primary benefit of this rule to DHS is the opportunity to increase revenue to provide the premium processing services; make infrastructure improvements in adjudications processes and information and services to immigration and naturalization benefit requestors; and respond to adjudication demands.</p> <p>This final rule benefits petitioners of Form I-140 (EB-1, multinational executives and managers and EB-2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver) who were previously ineligible for premium processing and may now have their petitions reviewed quicker. As a result, an adjudicative action may be taken more quickly. This change benefits businesses that previously would have had to wait longer to receive adjudicative action (such as a notice of approval) for an employee. It also benefits applicants of Form I-539 would receive an adjudicative action on their request for a change of status or extension of stay sooner than before, which may alleviate concern about lapses in their nonimmigrant status. Applicants of Form I-765 would benefit through receipt of an adjudicative decision in a specified timeframe making those applicants eligible to work legally in the United States sooner than they would have previously.</p>			RIA
COSTS				
Annualized monetized costs (7%)	\$12.2	N/A	N/A	RIA
Annualized monetized costs (3%)	\$12.7	N/A	N/A	
Annualized quantified, but unmonetized, costs	N/A			
Qualitative (unquantified) costs	<p>This final rule will require USCIS enhancements to handle the projected volumes of expedited requests without adverse impact to other processing times. DHS must hire and train new staff with revenue from current premium processing requests in order to expand expedited adjudication of premium processing consistent with the statutory requirement that other processing times not be adversely affected. DHS does not know how much it will cost to add new categories to apply for premium processing, and these costs are unquantified. The quantified transfers from Form I-129 and Form I-140 petitioners/applicants to DHS will result in higher revenue collected by USCIS. USCIS anticipates this additional revenue would cover any future expenditures required for staffing and training purposes.</p>			RIA
TRANSFERS				
Annualized monetized transfers (7%)	\$729.3	N/A	N/A	
Annualized monetized transfers (3%)	\$743.2	N/A	N/A	

From whom to whom?	From the fee-paying petitioners of Form I-129 and Form I-140 to DHS.			
From whom to whom?				
<i>Miscellaneous Analyses/Category</i>	<i>Effects</i>			<i>Source Citation</i>
Effects on State, local, or tribal governments	None			RIA
Effects on small businesses	None			RIA
Effects on wages	None			None
Effects on growth	None			None

2) Background

On October 1, 2020, the Continuing Appropriations Act, 2021 and Other Extensions Act, which contained the USCIS Stabilization Act, was signed into law.⁶⁰ The USCIS Stabilization Act amended section 286(u) of the INA, 8 U.S.C. 1356(u), to raise the premium processing fees for immigration benefit types designated for premium processing on or before August 1, 2020, and to expand the immigration benefit requests that may be designated for premium processing service within prescribed limitations, among other changes.⁶¹

Through this rulemaking, DHS is amending DHS premium processing regulations to codify those fees set by the USCIS Stabilization Act in section 286(u)(3)(A) of the INA, 8 U.S.C. 1356(u)(3)(A), and to establish new immigration benefit requests designated for premium processing under section 286(u)(3)(B) of the INA, 8 U.S.C. 1356(u)(3)(B), consistent with those conditions and eligibility requirements set forth by section 4102(b)(1) of the USCIS Stabilization Act.⁶²

⁶⁰ See USCIS Stabilization Act, Pub. L. 116-159 (Oct. 1, 2020).

⁶¹ *Id.*

⁶² *Id.*

3) Population

USCIS' premium processing service currently allows petitioners to pay an additional filing fee to expedite the adjudication of certain employment-based immigration benefit requests. The Continuing Appropriations Act, which included the USCIS Stabilization Act, set new fees for the premium processing of immigration benefit requests designated for premium processing as of August 1, 2020, and provided authority to establish new immigration benefit requests designated for premium processing and the associated fees.⁶³ This final rule will codify the new fees from the USCIS Stabilization Act into regulation and impose costs related to the newly eligible population filing Form I-907, Request for Premium Processing Service, for those immigration benefit requests designated for premium processing by this rule.

Table 3 shows the estimated total receipts received and refunds issued by USCIS for Form I-907 from fiscal year ("FY") 2017 through FY 2021. During this period, total annual receipts for Form I-907 ranged from a low of 307,981 in FY 2017 to a high of 412,836 in FY 2019. Based on a 5-year annual average, DHS estimates the annual receipts for Form I-907 to be 365,521. In addition, the total number of refunds issued for Form I-907 decreased to 151 in FY 2021 from a high of 1,055 in FY 2017, with a 5-year annual average of 457 Form I-907 issued refunds. USCIS presents data on refunds issued by USCIS because USCIS currently guarantees processing for these requests within 15 days to petitioners who chose to pay the additional fee to request this service. The 15-day period generally begins when USCIS properly receives the correct version of Form I-907, Request for Premium Processing Service, with fee, at the correct filing address. Within the 15-day period, USCIS will issue either an approval notice, denial notice, notice of intent to deny, or request for evidence, or open an investigation for fraud or misrepresentation. If the benefit request requires the submission of additional evidence or

⁶³ *Id.*

a response to a notice of intent to deny, a new 15-day period begins when USCIS receives a complete response to the request for evidence or notice of intent to deny. The premium processing fee is required to be paid in addition to, and in a separate remittance from, other filing fees, and cannot be waived. If USCIS did not take any of the above actions within the 15-day processing service timeframe, USCIS refunds the premium processing fee.

This rule allows USCIS up to 45-days for premium processing of Form I-140 requesting EB-1 immigrant classification as a multinational executive or manager or EB-2 immigrant classification as member of professions with advanced degrees or exceptional ability seeking a national interest waiver (NIW) and allows USCIS up to 30 days for premium processing of Form I-539 and Form I-765. This change from the standard premium processing timeframe of 15 days reduces the risk that expansion of premium processing to new populations would result in a disproportionate increase in refunds beyond the levels shown in Table 3. This expansion in timeframe will not result in longer wait times for individuals requesting premium processing since the affected population is only a relatively small percentage of people whose adjudication would have required more time (0.1-percent) and therefore would have been refunded. As a result of this final rule, USCIS refunds will not increase for individuals requesting premium processing.

	Form I-907 Receipts			Form I-907 Refunds*		
FY	Form I-129	Form I-140	Total	Form I-129	Form I-140	Total
2017	236,499	71,482	307,981	968	87	1,055
2018	292,294	78,215	370,509	123	101	224
2019	333,160	79,676	412,836	255	48	303
2020	276,052	64,264	340,316	499	51	550
2021	300,200	97,275	397,475	42	109	151
Total	1,438,205	390,912	1,829,117	1,887	396	2,283
5-year Average	287,641	78,182	365,823	377	79	457

Source: USCIS, OP&S PRD, CLAIMS3 and ELIS database, October 13, 2021.

Notes: *The report reflects the most up-to-date data available at the time the system was queried. Any duplicate case information has been removed.

Table 4 shows the percentage of the eligible Form I-140 petitioners who chose to submit a premium processing request from FY 2017 through FY 2021. The following classifications are currently designated for premium processing: EB-1 Aliens of extraordinary ability, EB-1 Outstanding professors and researchers, EB-2 Members of professions with advanced degrees or exceptional ability not seeking a National Interest Waiver, EB-3 Skilled workers, EB-3 Professionals, and EB-3 Workers other than skilled workers and professionals.⁶⁴ Currently not all Form I-140 petitioners are eligible for premium processing, therefore DHS only discusses the percentage of those who are eligible for premium processing compared to the total number of premium processing requests submitted. The population in Table 3 consist of all Form I-140 petitions that are submitted with a Form I-907. However, in FY 2020 of the 64,264 receipts 35,367 were ineligible and 28,897 were eligible. In FY 2020 there were 129,536 total receipts for Form I-140. Of those 64,501 are currently ineligible and 65,035 are eligible for premium processing. The 5-year annual average percentage of eligible Form I-140 petitioners who chose to submit a premium processing request was 52 percent. In FY 2021, there were significantly more Form I-140 petitions submitted compared to previous years; however, the percentage of Form I-140 petitions filed with a Form I-907 has stayed consistent over the past 5 years.

Table 4. Form I-140 Receipts Eligible for Premium Processing, FY 2017 through FY 2021.			
FY	Total Form I-140 Petitions eligible for Premium processing	Total Form I-140 Petitions submitted with Form I-907	Percentage of Form I-907 Receipts
2017	60,255	32,674	54%
2018	62,266	35,875	58%
2019	70,218	34,898	50%
2020	65,035	28,897	44%
2021	112,070	58,359	52%
Total	369,844	190,703	
5-year Annual Average	73,969	38,141	52%
Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 13, 2021. Note: Form I-140 eligible petitioners include the following classifications are currently			

⁶⁴ See “How Do I Request Premium Processing?” <https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing> (last updated Apr. 12, 2021).

designated for premium processing: EB-1 Aliens of extraordinary ability, EB-1 Outstanding professors and researchers, EB-2 Members of professions with advanced degrees or exceptional ability not seeking a National Interest Waiver, EB-3 Skilled workers, EB-3 Professionals, and EB-3 Workers other than skilled workers and professionals.

Table 5 shows the percentage of the eligible Form I-129 petitioners who chose to submit a premium processing request along with their Form I-129 petitions from FY 2017 through FY 2021. The 5-year annual average percentage of eligible Form I-129 petitioners who choose to submit a premium processing request was 53-percent.

Table 5. Form I-907, Request for Premium Processing Service, filed with Form I-129, Petition for a Nonimmigrant Worker, FY 2017 through FY 2021.			
FY	Total Form I-129 Receipts	Total Form I-129 Petitions submitted with Form I-907	Percentage of Form I-907 Receipts that come with Form I-129
2017	530,812	236,499	45%
2018	548,950	292,296	53%
2019	551,840	333,160	60%
2020	555,093	274,864	50%
2021	531,818	300,200	56%
Total	2,718,513	1,437,019	
5-year Annual Average	543,703	287,404	53%
Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 13, 2021.			

To estimate the probability that an eligible petitioner may choose to request premium processing, DHS computes a ratio of the 5-year annual average number of requests to the 5-year annual average number of eligible petitioners. Table 6 shows that of those currently eligible for premium processing, 53-percent chose to submit a premium processing request. For purposes of this analysis, DHS assumes that demand rate will carry forward and will use this percentage to estimate the possible adoption volumes of the newly eligible Form I-539 and I-765 applicants.

Table 6. Percentage of Premium Processing Requests, FY 2017 through FY 2021.			
	5-year Annual Average of Forms submitted with Form I-907	5-year Annual Average of Total Receipts by Form	Percentage of Form I-907 Receipts
Form I-140	38,141	73,969	52%
Form I-129	287,404	543,703	53%
Total	325,545	617,672	53%
Source: USCIS Analysis			

4) Costs, Transfers, and Benefits of the Final Rule

a) Form I-129, Petition for a Nonimmigrant Worker, Transfer Payments

Currently, petitioners requesting certain benefits on Form I-129, Petition for a Nonimmigrant Worker, are eligible to also submit a request for premium processing with their immigration benefit request. Table 7 shows the population of petitioners who submitted Form I-907 with Form I-129⁶⁵ based on the corresponding nonimmigrant classifications from FY 2017 through FY 2021. The USCIS Stabilization Act increased the premium processing fees for Form I-129. The premium processing fee for H-2B or R-1 nonimmigrant status was increased from \$1,440 to \$1,500, an increase of \$60, which represents a 4.2-percent increase. The premium fee for all other available Form I-129 classifications (E-1, E-2, E-3, H-1B, H-3, L-1A, L-1B, LZ, O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, P-3S, Q-1, TN-1, and TN-2) was increased from \$1,440 to \$2,500, and increase of \$1,060, which represents a 73.6-percent increase. Because the fee for premium processing for the Form I-129 H-2B and R-1 classifications was increased by a different amount than for all other Form I-129 classifications, the data for the Form I-129 H-2B and R-1 classifications data was separated from the data for all other classifications. During this period, total annual receipts for Form I-907 with Form I-129 H-2B or R-1 classifications ranged from a low of 7,067 in FY 2020 to a high of 11,764 in FY 2021. Based on a 5-year annual average, DHS estimates the annual receipts from Form I-907 filed with Form I-129 H-2B or R-1 classifications to be 9,024.

During this period, total annual receipts for Form I-907 filed with all other available Form I-129 classifications (E-1, E-2, E-3, H-1B, H-3, L-1A, L-1B, LZ, O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, P-3S, Q-1, TN-1, and TN-2) ranged from a low of 227,289 in FY 2017 to a high of 322,656 in FY 2019. Based on a 5-year annual average, DHS

⁶⁵ See Instructions for Petition for Nonimmigrant Worker. Form I-129. OMB No. 1615-0009 Expires Sept. 30, 2021. Accessed at <https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf> (last updated Mar. 10, 2021).

estimates the annual receipts for Form I-907 associated with all other Forms I-129 to be 287,404, which represents 78.6-percent of all filed Form I-907 receipts⁶⁶.

Table 7. Form I-907, Request for Premium Processing Service, filed with Form I-129, Petition for a Nonimmigrant Worker, FY 2017 through FY 2021.			
FY	Form I-129 H-2B or R-1 Request Receipts	Form I-129 All other Visa Request Receipts*	Total Form I-907 Receipts
2017	9,210	227,289	236,499
2018	9,127	283,169	292,296
2019	10,504	322,656	333,160
2020	7,067	267,797	274,864
2021	11,764	288,436	300,200
Total	47,672	1,389,347	1,437,019
5-year Annual Average	9,534	277,869	287,404
Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 13, 2021.			
*Note: All other includes the following classifications: E-1, E-2, E-3, H-1B, H-2A, H-3, L-1A, L-1B, LZ, O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, P-3S, Q-1, TN-1, and TN-2. H-2B or R-1 equals 3.3% and All other I-129 equals 96.7%. of Total Form I-907 Receipts filed with a Form I-129 petition.			

On October 1, 2020, the Continuing Appropriations Act, which included the USCIS Stabilization Act, was signed into law. The USCIS Stabilization Act set new fees for premium processing of immigration benefit requests that had been designated for premium processing as of August 1, 2020, and expanded DHS authority to establish and collect new premium processing fees, and to use those additional funds for expanded purposes.⁶⁷ Table 7 shows that in FY 2021 when the fee was increased, Form I-129 petitioners were still willing to pay for premium processing. This provides suggestive evidence that petitioners' demand for premium processing is insensitive to the price increases effected by this rule. Consequently, projections of demand for expanded premium processing presented in this analysis do not anticipate a quantifiable price response.

The fee for premium processing for those petitioners requesting H-2B or R-1 nonimmigrant status was increased from \$1,440 to \$1,500, an increase of \$60, which

⁶⁶ Calculation: 287,404 Total I-129 Forms filed with an I-907 (See Table 5 – Total Form I-129 Petitions submitted with Form I-907) divided by 365,823 Total Form I-907 filed = 78.6 percent.

⁶⁷ See USCIS Stabilization Act, Pub. L. 116-159 (Oct. 1, 2020).

represents a 4.2- percent increase.⁶⁸ DHS collected an additional \$705,840⁶⁹ from the new, higher premium processing fees associated with Form I-129 requests from the H-2B or R-1 nonimmigrant status fee paying population in annual transfer payments for FY 2021 to DHS. The fee for all other Form I-129 petitioners requesting premium processing was increased from \$1,440 to \$2,500, an increase of \$1,060, which represents a 73.6-percent increase. DHS collected an additional \$305,742,160⁷⁰ in transfer payments from premium processing requestors filing Form I-129 for all other visa classifications to DHS in FY 2021. The total increase in transfer payments from the Form I-129 fee-paying population to DHS in FY 2021 was \$306,448,000 as shown in Table 8.

Table 8. Fees for Form I-907, Request for Premium Processing Service, filed with Form I-129, Petition for a Nonimmigrant Worker, FY 2021.			
Period of Analysis	FY 2021	Fee	Total
Pre-Appropriations Act (Baseline Costs)	11,764	\$1,440	\$16,940,160
Post-Appropriations Act	11,764	\$1,500	\$17,646,000
Change in Transfer Payments for Form I-129 H-2B or R-1			\$705,840
Pre-Appropriations Act (Baseline Costs)	288,436	\$1,440	\$415,347,840
Post-Appropriations Act	288,436	\$2,500	\$721,090,000
Change in Transfer Payments for Form I-129 All Other*			\$305,742,160
Total Change in Transfer Payments for Form I-129 in FY 2021			\$306,448,000
Source: USCIS Analysis			
*Note: All other includes the following classifications (E-1, E-2, E-3, H-1B, H-2A, H-3, L-1A, L-1B, LZ, O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, P-3S, Q-1, TN-1, and TN-2)			

DHS estimates the new premium processing fees associated with Form I-129 requests for H-2B or R-1 nonimmigrant status will result in \$572,040⁷¹ in additional annual transfer payments from the Form I-129 H-2B and R-1 fee-paying population to

⁶⁸ See *id.*; On October 16, 2020, USCIS issued a web alert notifying the public that USCIS would increase fees for premium processing, effective October 19, 2020, as required by the Continuing Appropriations Act, 2021 and Other Extensions Act, Pub. L. 116-159, signed into law on October 1, 2020. <https://www.uscis.gov/news/premium-processing-fee-increase-effective-oct-19-2020> (last updated Oct. 16, 2020).

⁶⁹ Calculation: 11,764 annual Form I-129 H-2B or R-1 applications * \$60 (\$1,500 fee - \$1,440) = \$705,840.

⁷⁰ Calculation: 288,436 annual Form I-129 applications for other than H-2B and R-1 status * \$1,060 (\$2,500 fee - \$1,440) = \$305,742,160.

⁷¹ Calculation: 9,534 average annual Form I-129 H-2B or R-1 applications * \$60 (\$1,500 fee - \$1,440) = \$572,040.

DHS. The fee for all other Form I-129 petitioners requesting premium processing was increased from \$1,440 to \$2,500, an increase of \$1,060. DHS estimates increased annual transfer payments from premium processing requestors filing Form I-129 for all other visa classifications to DHS will be \$294,541,140 in FY 2022 through FY 2030.⁷² The total annual increased transfer payments from the Form I-129 fee-paying population to DHS is \$295,113,180 from a projected increase in filing fees in FY 2022 through FY 2030, shown in Table 9. From a societal perspective, the opportunity cost measures represent social costs, while the filing fees represent transfers from applicants to the government.⁷³

Table 9. Fees for Form I-907, Request for Premium Processing Service, filed with Form I-129, Petition for a Nonimmigrant Worker, FY 2022 through FY 2030.			
Period of Analysis	5-year Annual Average (FY 2017 through FY 2021)	Fee	Total
Pre-Appropriations Act (Baseline Costs)	9,534	\$1,440	\$13,728,960
Post-Appropriations Act	9,534	\$1,500	\$14,301,000
Annual Change in Transfer Payments for Form I-129 H-2B or R-1			\$572,040
Pre-Appropriations Act (Baseline Costs)	277,869	\$1,440	\$400,131,360
Post-Appropriations Act	277,869	\$2,500	\$694,672,500
Annual Change in Transfer Payments for Form I-129 All Other*			\$294,541,140
Total Annual Change in Transfer Payments for Form I-907 in FY 2022 through FY 2030			\$295,113,180
Source: USCIS Analysis			
*Note: All other includes the following classifications (E-1, E-2, E-3, H-1B, H-2A, H-3, L-1A, L-1B, LZ, O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, P-3S, Q-1, TN-1, and TN-2)			

b) Form I-140, Immigrant Petition for Alien Workers, Transfer Payments

Table 10 shows the population of petitioners who submitted Form I-907, Request for Premium Processing Service, with Form I-140, Immigrant Petition for Alien

⁷² Calculation: 277,869 average annual Form I-129 applications for other than H-2B and R-1 status * \$1,060 (\$2,500 fee - \$1,440) = \$294,541,140.

⁷³ See Instructions for Petition for Nonimmigrant Worker. Form I-129. OMB No. 1615-0009 Expires Sept. 30, 2021. Accessed at <https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf> (last updated Mar. 10, 2021). The USCIS Stabilization Act did not change the time burden to complete any of the classifications for Form I-129, nor form fee. The public reporting burden for this collection of information is in the form instructions.

Workers,⁷⁴ based on the corresponding employment-based (EB) classifications that are currently designated for premium processing. The following classifications are currently designated for premium processing: EB-1 Aliens of extraordinary ability (E11), EB-1 Outstanding professors and researchers (E12), EB-2 Members of professions with advanced degrees or exceptional ability not seeking a National Interest Waiver E21 (non-NIW), EB-3 Skilled workers (E31), EB-3 Professionals (E32), and EB-3 Workers other than skilled workers and professionals (EW3).⁷⁵

Table 10 also shows the number of Form I-140 receipts filed with Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) from FY 2017 through FY 2021. The number of Form G-28 submissions allows USCIS to estimate the cost of time for a petitioner or representative to file each form, which is addressed in the next section of this analysis. During FY 2017 through FY 2021, total annual receipts from Form I-907 filed with Form I-140 ranged from a low of 57,969 in FY 2020 to a high of 88,109 in FY 2021. Based on a 5-year annual average, DHS estimates the annual receipts of Form I-907 filed with Form I-140 to be 71,569.

Table 10. Form I-907, Request for Premium Processing Service filed with Form I-140, Immigrant Petition for Alien Workers and the Number of Forms G-28 Filed with those Forms I-907, FY 2017 through FY 2021.			
FY	Form I-907 Receipts Received with a Form I-140	Form G-28 Receipts Received with a Form I-140 and Form I-907	Percentage of Forms I-140 requesting premium processing and filed by an attorney or other representative (Form G-28)
2017	71,482	65,453	92%
2018	78,215	73,168	94%
2019	79,676	73,144	92%
2020	64,264	57,969	90%
2021	97,275	88,109	91%
Total	390,912	357,843	
5-year Annual Average	78,182	71,569	92%
Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 13, 2021.			

⁷⁴ See Instructions for Petition for Alien Workers. Form I-140. OMB No. 1615-0015 Expires June 30, 2022. Accessed at <https://www.uscis.gov/sites/default/files/document/forms/i-140instr.pdf> (last updated Sep. 30, 2020).

⁷⁵ See “How Do I Request Premium Processing?” <https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing> (last updated Apr. 12, 2021).

Effective October 1, 2020, the USCIS Stabilization Act increased the fee for premium processing of all designated classifications (Classifications: E11, E12, E21 (non-NIW), E31, E32, EW3) available with Form I-140, from \$1,440 to \$2,500, an increase of \$1,060.⁷⁶

Using the population from FY 2021 of 97,275 applicants, DHS estimates that as a result of the fee increase the additional premium processing annual transfer payments from the Form I-140 fee-paying population to DHS was \$103,111,500 in FY 2021, shown in Table 11. Consistent with demand for Form I-129 premium processing, DHS observed an increase in premium processing requests associated with Form I-140 in FY 2021 following implementation of the fee increase. This corroborates the agency's experience that requestors are insensitive to the price increases effected by this rule, and will continue to file for premium processing.

Table 11. Fees for Form I-907, Request for Premium Processing Service, currently filed with Form I-140, Immigrant Petition for Alien Workers*			
Period of Analysis	FY 2021	Fee	Total
Pre-Appropriations Act (Baseline Costs)	97,275	\$1,440	\$140,076,000
Post-Appropriations Act	97,275	\$2,500	\$243,187,500
Total Transfer Payments			\$103,111,500
Source: USCIS Analysis			
* Note: Classifications: E11, E12, E21 (non-NIW), E31, E32, EW3			

Using the historical 5-year annual average from FY 2017 through FY 2021 of 78,182 applicants, DHS estimates that as a result of the increase in filing fees for premium processing the additional annual transfer payments from the Form I-140 fee-paying population to DHS will be \$82,872,920 a projected in FY 2022 through FY 2030 shown

⁷⁶ See USCIS Stabilization Act; On October 16, 2020, USCIS issued a web alert notifying the public that USCIS would increase fees for premium processing, effective October 19, 2020, as required by the Continuing Appropriations Act, 2021 and Other Extensions Act, Pub. L. No. 116-159, signed into law on October 1, 2020. <https://www.uscis.gov/news/premium-processing-fee-increase-effective-oct-19-2020> (last updated Oct. 16, 2020).

in Table 12. From a societal perspective, the opportunity cost measures represent social costs, while the filing fees represent transfers from applicants to the government.⁷⁷

Table 12. Fees for Form I-907, Request for Premium Processing Service, currently filed with Form I-140, Immigrant Petition for Alien Workers*			
Period of Analysis	5-year Annual Average (FY 2017 through FY 2021)	Fee	Total
Pre-Appropriations Act (Baseline Costs)	78,182	\$1,440	\$112,582,080
Post-Appropriations Act	78,182	\$2,500	\$195,455,000
Total Transfer Payments			\$82,872,920
Source: USCIS Analysis			
* Note: Classifications: E11, E12, E21 (non-NIW), E31, E32, EW3			

This final rule allows USCIS 45-days for premium processing of currently eligible Form I-140 requests, instead of the existing 15-day timeframe. While USCIS is unable to determine how many of the 79 Form I-140 premium processing refunds issued under the 15-day timeframe (Table 3) would be able to have their Request for Premium Processing completed as a result of this change, this would result in a reduction of the expected transfer of refunded revenues from the government, back to those petitioners.

c) Form I-140, Immigrant Petition for Alien Workers Newly Eligible Population, Costs & Transfer Payments

The following classifications are currently designated for premium processing: EB-1 Aliens of extraordinary ability, EB-1 Outstanding professors and researchers, EB-2 Members of professions with advanced degrees or exceptional ability not seeking a National Interest Waiver, EB-3 Skilled workers, EB-3 Professionals, EB-3 Workers other than skilled workers and professionals.⁷⁸ In this final rule, DHS is adding two new employment-based classifications that will be designated for premium processing when

⁷⁷ See Instructions for Petition for Alien Workers. Form I-140. OMB No. 1615-0015 Expires June 30, 2022. Accessed at <https://www.uscis.gov/sites/default/files/document/forms/i-140instr.pdf> (last updated Sep. 30, 2020). The USCIS Stabilization Act did not change the time burden to complete any of the classifications for Form I-140, nor form fee. The public reporting burden for this collection of information is in the form instructions.

⁷⁸ See “How Do I Request Premium Processing?” <https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing> (last updated Apr. 12, 2021).

filing Form I-140. DHS is including EB-1, multinational executives and managers, and EB-2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver. Petitioners of Form I-140 (EB-1, multinational executives and managers and EB-2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver) who were previously ineligible for premium processing may be able to have their petitions reviewed more quickly. As a result, an adjudicative action may be taken more quickly. This change will come at a cost of time and money for this new population.

Table 13 shows the total receipts received for Form I-140 EB-1, multinational executives, and managers, and Form I-140 EB-2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver for FY 2017 through FY 2021. During this period, total annual receipts for Form I-140 with these classifications ranged from a low of 64,501 in FY 2020 to a high of 79,135 in FY 2017. Based on a 5-year annual average, DHS estimates the annual receipts for Form I-140 with these two classifications to be 72,637.

Table 13. Form I-140, Immigrant Petition for Alien Workers, receipts by classification, FY 2017 through FY 2021.			
FY	EB-1, Multinational executives, and managers Receipts	EB-2, Members of professions with advanced degrees or exceptional ability seeking a national interest waiver Receipts	Total
2017	16,708	62,427	79,135
2018	13,595	61,652	75,247
2019	12,492	65,711	78,203
2020	11,222	53,279	64,501
2021	10,182	55,916	66,098
Total	64,199	298,985	363,184
5-year Annual Average	12,840	59,797	72,637
Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 13, 2021.			

DHS recognizes that not all eligible petitioners will submit a premium processing request, and therefore, DHS uses the current percentage of premium processing requests

compared to the number of total receipts from the currently eligible population, 52-percent, as a proxy of the number of newly eligible petitioners that will submit a premium processing request with Form I-140. DHS estimates 37,771 petitioners (52 percent of the newly eligible population of 72,637) would submit a premium processing request with their I-140 petition, as shown in Table 14.

Table 14. Estimated of Premium Processing Requests for Newly Eligible Form I-140, Immigrant Petition for Alien Workers	
Percent of Total Newly Eligible Form I-140 petitioners	Newly Eligible Form I-140 Petitioners
52%	37,771
Source: USCIS Analysis	

Petitioners who file Form I-140 with a Form G-28 would use a lawyer or accredited representative to complete any related immigration benefit requests or forms. Based on the data from Table 10, 92 percent of Form I-140 petitions were filed with a Form G-28, while the remaining 8 percent of Form I-140 petitions are filed without a Form G-28.⁷⁹ Table 15 shows the total estimated population of petitioners who would choose to file Form I-140 requesting premium processing with an in-house or outsourced lawyer using a Form G-28⁸⁰ and the total estimated population of petitioners who would file Form I-140 requesting premium processing with a Human Resources Specialist.

Table 15. Estimated Newly Eligible Form I-140, Immigrant Petition for Alien Workers, populations with and without Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.			
Percent	Estimated Form I-140 requesting premium processing filed by an Attorney or other representative (Form G-28) (92% of 37,771)	Estimated Form I-140 requesting premium processing filed by an HR Specialist (8% of 37,771)	Total
Population of Newly Eligible Form I-140 Petitioners filing for Premium Processing by Filer Type (52%)	34,749	3,022	37,771
Source: USCIS Analysis			

⁷⁹ Calculation: 100 percent – 92 percent filing with Form G-28 = 8 percent only filing Form I-140.

⁸⁰ DHS uses an outsourced lawyer recognizing that not all entities will have in-house counsel and may need to hire outside counsel.

In order to estimate the opportunity costs of time for completing and filing Form I-907, DHS assumes that a petitioner will use a human resources (HR) specialist, an in-house lawyer, or an outsourced lawyer to prepare Form I-907 petitions.⁸¹ DHS uses the mean hourly wage of \$33.38 for HR specialists to estimate the opportunity cost of the time for preparing and submitting Form I-907.⁸² Additionally, DHS uses the mean hourly wage of \$71.59 for in-house lawyers to estimate the opportunity cost of the time for preparing and submitting Form I-140.⁸³

DHS accounts for worker benefits when estimating the total costs of compensation by calculating a benefits-to-wage multiplier using the U.S. Department of Labor, BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.45 and, therefore, is able to estimate the full opportunity cost per petitioner, including employee wages and salaries and the full cost of benefits such as paid leave, insurance, retirement, etc.⁸⁴ DHS multiplied the average hourly U.S. wage rate for HR specialists and in-house lawyers by 1.45 to account for the full cost of

⁸¹ USCIS limited its analysis to HR specialists, in-house lawyers, and outsourced lawyers to present estimated costs. However, USCIS understands that not all entities employ individuals with these occupations and, therefore, recognizes equivalent occupations may also prepare and file these petitions.

⁸² See Bureau of Labor Statistics, U.S. Department of Labor, “Occupational Employment Statistics, May 2020, Human Resources Specialist.” Available at <https://www.bls.gov/oes/2020/may/oes131071.htm>. Accessed April 13, 2021.

⁸³ See Bureau of Labor Statistics, U.S. Department of Labor, “Occupational Employment Statistics, May 2020, Lawyers.” Available at <https://www.bls.gov/oes/2020/may/oes231011.htm>. Accessed April 13, 2021.

⁸⁴ The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) / (Wages and Salaries per hour) (\$38.60 Total Employee Compensation per hour) / (\$26.53 Wages and Salaries per hour) = 1.454964 = 1.45 (rounded). See U.S. Department of Labor, Bureau of Labor Statistics, Economic News Release, *Employer Cost for Employee Compensation (December 2020)*, Table 1. *Employer Costs for Employee Compensation by ownership* (Dec. 2020), available at https://www.bls.gov/news.release/archives/ecec_03182021.htm. (last visited March. 31, 2021). The ECEC measures the average cost to employers for wages and salaries and benefits per employee hour worked.

employee benefits, for a total of \$48.40⁸⁵ per hour for an HR specialist and \$103.81⁸⁶ per hour for an in-house lawyer. DHS recognizes that a firm may choose, but is not required, to outsource the preparation of these petitions and, therefore, presents two wage rates for lawyers. To determine the full opportunity costs of time if a firm hired an outsourced lawyer, DHS multiplied the average hourly U.S. wage rate for lawyers by 2.5 for a total of \$178.98⁸⁷ to approximate an hourly wage rate for an outsourced lawyer⁸⁸ to prepare and submit Form I-907.⁸⁹

To estimate the opportunity cost of time to complete and file Form I-907, DHS applies the estimated time burden (0.58 hours) to the newly eligible population and compensation rates of those who may file with or without a lawyer.⁹⁰ Table 16 shows the estimated annual opportunity cost of time for newly eligible Form I-140 petitioners employing an in-house or outsourced lawyer to complete and file Form I-907 requests. DHS does not know the exact number of petitioners who will choose an in-house or an outsourced lawyer, but assumes it may be a 50/50 split and therefore provides an average.

⁸⁵ Calculation: $\$33.38 * 1.45 = \48.40 total wage rate for HR specialist.

⁸⁶ Calculation: $\$71.59 * 1.45 = \103.81 total wage rate for in-house lawyer.

⁸⁷ Calculation: $\$71.59 * 2.5 = \178.98 total wage rate for an outsourced lawyer.

⁸⁸ The DHS analysis in, “Exercise of Time-Limited Authority to Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program” (83 FR 24905, May 31, 2018), available at <https://www.federalregister.gov/documents/2018/05/31/2018-11732/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2018-numerical-limitation-for-the>, used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages.

The DHS ICE rule, “Final Small Entity Impact Analysis: Safe-Harbor Procedures for Employers Who Receive a No-Match Letter” at G-4 (Aug. 25, 2008), available at <https://www.regulations.gov/document/ICEB-2006-0004-0922> also uses a multiplier. The methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule, pages 143-144.

⁸⁹ The DHS analysis in, “Exercise of Time-Limited Authority to Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program” (83 FR 24905, May 31, 2018), available at <https://www.federalregister.gov/documents/2018/05/31/2018-11732/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2018-numerical-limitation-for-the>, used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages.

Also, the analysis for a DHS ICE rule, “Final Small Entity Impact Analysis: Safe-Harbor Procedures for Employers Who Receive a No-Match Letter” at G-4 (Aug. 25, 2008), available at <https://www.regulations.gov/document/ICEB-2006-0004-0922> used a multiplier. The methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule, pages 143-144.

⁹⁰ See Instructions for Request for Premium Processing Service. Form I-907. OMB No. 1615-0048 Expires July 31, 2022. Accessed at <https://www.uscis.gov/sites/default/files/document/forms/i-907instr.pdf> (last updated Sep. 30, 2020).

These opportunity costs of time for Form I-140 petitioners who request premium processing using an attorney or other representative are estimated to range from \$2,092,230 to \$3,607,238 with an average of \$2,849,734.

Table 16. Average Opportunity Costs of Time to Newly Eligible Form I-140 Petitioners Requesting Premium Processing Filing with an Attorney or other Representative.				
	Newly Eligible Population of Petitioners Filing with a Lawyer	Time Burden to Complete Form I-907 (Hours)	Cost of Time	Total Opportunity Cost
	A	B	C	D=(AxBxC)
In House Lawyer (\$103.81 /hr.)	34,749	0.58	\$103.81	\$2,092,230
Outsourced Lawyer (\$178.98/hr.)	34,749	0.58	\$178.98	\$3,607,238
Average				\$2,849,734
Source: USCIS Analysis				

To estimate the remaining opportunity cost of time for a HR specialist filing Form I-907 without a lawyer, DHS applies the estimated public reporting time burden (0.58 hours) to the compensation rate of an HR specialist. For those newly eligible, shown in Table 17, DHS estimates the total annual opportunity cost of time to HR specialists completing and filing Form I-907 requests will be approximately \$84,834.

Table 17. Opportunity Costs of Time to Newly Eligible Form I-140 Petitioners for Filing Form I-907, Request for Premium Processing Service without an Attorney or Accredited Representative.				
	Newly Eligible Population	Time Burden to Complete Form I-907 (Hours)	HR Specialist's Opportunity Cost of time (48.40 /hr.)	Total Opportunity Cost of Time
	A	B	C	D=(AxBxC)
Estimate of Eligible Form I-140 Petitions (52%)	3,022	0.58	\$48.40	\$84,834
Source: USCIS Analysis				

The costs to the petitioners newly eligible to file Form I-907 with a Form I-140 as a result of this rule is estimated to be \$2,934,568, as shown Table 18. From a societal

perspective, the opportunity cost measures represent social costs, while the filing fees represent transfers from applicants to the government.⁹¹

Table 18. Total Costs to Newly Eligible Form I-140 Petitioners for Filing Form I-907, Request for Premium Processing Service			
	Opportunity Cost of Time to Complete and to File Form I-907 (Lawyers), Table 16	Opportunity Cost of Time to Complete and File Form I-907 (HR Specialists), Table 17	Total Cost
	A	B	D=(A+B+C)
Estimate of Eligible Form I-140 Petitions (52%)	\$2,849,734	\$84,834	\$2,934,568
Source: USCIS Analysis			

In Table 19, DHS estimates that as a result of the increase in filing fees for Form I-907, Request for Premium Processing Service, the additional annual transfer payments from the new Form I-140 fee-paying population to DHS will be \$94,427,500.

Table 19. New Filing Fees to Form I-140 Petitioners for Filing Form I-907, Request for Premium Processing Service			
	Newly Eligible Population	New Filing Fees for Form I-907	Total Filing Fees from Form I-907
	A	B	C=(BxA)
Estimate of Eligible Form I-140 Petitions (52%)	37,771	\$2,500	\$94,427,500
Source: USCIS Analysis			

d) Form I-539, Application to Extend/Change Nonimmigrant Status, Costs & Transfer Payments

In this final rule, DHS is now adding Form I-539, Application to Extend/Change Nonimmigrant Status, to the types of immigration benefit requests that are eligible for premium processing. While Form I-539 is used for many nonimmigrants categories who may apply for an extension of stay or a change of status, premium processing will now be extended to Form I-539 requestors changing status to F-1, F-2, J-1, J-2, M-1, or M-2 nonimmigrant status or a change of status or extension of stay in E-1, E-2, E-3, H-4, L-2, O-3, P-4, or R-2 nonimmigrant status.

⁹¹ See Instructions for Petition for Alien Workers. Form I-140. OMB No. 1615-0015 Expires June 30, 2022. Accessed at <https://www.uscis.gov/sites/default/files/document/forms/i-140instr.pdf> (last updated Sep. 30, 2020). The USCIS Stabilization Act did not change the time burden to complete any of the classifications for Form I-140, nor form fee. The public reporting burden for this collection of information is in form instructions.

Table 20 shows the total receipts received for Form I-539 for FY 2017 through FY 2021 and the number of Form I-539 receipts filed with an attorney or accredited representative using Form G-28. The number of Form G-28 submissions allows USCIS to estimate the numbers of forms that are filed by an attorney or accredited representative. This in turn, allows USCIS to estimate the opportunity cost of time depending on the type of filer. During this period, total annual receipts for Form I-539 ranged from a low of 227,120 in FY 2019 to a high of 441,920 in FY 2020. Based on a 5-year annual average, DHS estimates the annual receipts for Form I-539 to be 284,345, with 49 percent of Forms I-539 being filed by an attorney or accredited representative.

Table 20. USCIS Receipts of Form I-539, Application to Extend/Change Nonimmigrant Status, with the Number of G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, Received, FY 2017 through FY 2021.			
FY	Receipts	Form G-28	Percentage of Forms I-539 filed with Form G-28
2017	233,306	121,855	52%
2018	233,437	130,654	56%
2019	227,120	130,435	57%
2020	441,920	166,298	38%
2021	285,941	148,779	52%
Total	1,421,724	698,021	49%
5-year Annual Average	284,345	139,604	49%
Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 13, 2021.			

DHS does not know how many newly eligible Form I-539 applicants will choose to submit a premium processing request since this population has not previously been eligible to file for premium processing. DHS recognizes that not all eligible petitioners will submit a premium processing request. Table 21 shows the 5-year annual average for the classifications that are now eligible for premium processing along with the number of forms that are filed with a Form G-28 for FY 2017 through FY 2021. Overall, 49 percent⁹² of Form I-539 applications will now be eligible for premium processing. Form I-539 F-1, F-2, J-1, J-2, M-1, M-2 classifications account for 14 percent⁹³ of the newly

⁹² Calculation: 5-year Annual Average Total Newly Eligible Form I-539 applicants/ 5-year Annual Average of Total Form I-539 Receipts = 138,557 (Table 21) / 284,345 (Table 20) = 49%.

⁹³ Calculation: F, J, and M Total /Total of all Classifications= 96,708 / 692,785=14%.

eligible population and are students and exchange visitors. Form I-539 E-1, E-2, E-3, L-2, H-4, O-3, P-4, R-2 classifications are employment visas and account for the remaining 86 percent⁹⁴ of the newly eligible population of Form I-539 filers.

Table 21. USCIS 5-year Annual Average of Form I-539 Receipts, Application to Extend/Change Nonimmigrant Status by Classification and File with or without a Form G-28, FY 2017 through FY 2021.			
Form I-539 Classifications	Form I-539 filed with Form G-28	Form I-539 filed without Form G-28	Total Form I-539 Receipts
F-1	22,180	55,680	77,860
F-2	2,640	6,161	8,801
J-1	209	1,033	1,242
J-2	132	529	661
M-1	333	7,773	8,106
M-2	14	24	38
F-1, F-2, J-1, J-2, M-1, M-2 Total	25,508	71,200	96,708
E-1	601	99	700
E-2	10,985	1,966	12,951
E-3	2,340	417	2,757
H-4	372,202	131,452	503,654
L-2	53,545	7,617	61,162
O-3	6,825	1,004	7,829
P-4	875	443	1,318
R-2	4,470	1,236	5,706
E-1, E-2, E-3, L-2, H-4, O-3, P-4, R-2 Total	451,843	144,234	596,077
Total of all Classifications	477,351	215,434	692,785
5-year Annual Average of all Classifications	95,470	43,087	138,557
Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 13, 2021.			

Table 21 shows that of the 138,557 newly eligible applicants, DHS calculated that 19,342 would be applying for F-1, F-2, J-1, J-2, M-1, M-2 classifications (14%), and the remaining 119,215 would be applying for E-1, E-2, E-3, L-2, H-4, O-3, P-4, R-2 classifications (86%). Since Form I-539 applicants have never been eligible to request premium processing, DHS has no historical data to determine how many of the newly eligible population will take advantage of premium processing. Therefore, DHS uses the 53 percent average of Forms I-129 and I-140 that request premium processing for this newly eligible population as a proxy.

⁹⁴ Calculation: All Other Total /Total of all Classifications= 596,077 / 692,785=86%.

Of the 19,342 newly eligible applicants for F-1, F-2, J-1, J-2, M-1, M-2 classifications, DHS estimates that 10,251 applicants (53 percent of the eligible population) may submit a premium processing request along with their Form I-539 application. Of the 119,215 newly eligible applicants for E-1, E-2, E-3, L-2, H-4, O-3, P-4, R-2 classifications, DHS estimates that 63,184 applicants (53 percent of the eligible population) may submit a premium processing request along with their Form I-539 application as shown in Table 22. DHS is planning to begin accepting premium processing requests from F-1, F-2, J-1, J-2, M-1, M-2 classifications beginning in FY 2022. DHS anticipates accepting premium processing requests from E-1, E-2, E-3, L-2, H-4, O-3, P-4, R-2 classifications by FY 2025.

Table 22. Estimated USCIS 5-year Annual Average Form I-539, Application to Extend/Change Nonimmigrant Status, populations filed with and without Form G-28 Notice of Entry of Appearance as Attorney or Accredited Representative, FY 2017 through FY 2021.			
Classification Type	Estimated Form I-539 filed with Form G-28	Estimated Form I-539 filed without Form G-28	Total
F-1, F-2, J-1, J-2, M-1, M-2 classifications	2,704	7,547	10,251
E-1, E-2, E-3, L-2, H-4, O-3, P-4, R-2 classifications	47,895	15,289	63,184
Total	50,599	22,836	73,435
Source: U.S. Citizenship and Immigration Services, Office of Performance and Quality, C3 Consolidated via SAS, queried October 13, 2021.			

In order to estimate the opportunity costs of time for completing and filing Form I-907, DHS assumes that an applicant will use an in-house or outsourced lawyer or will prepare Form I-907 request themselves. Many of the individuals using Form I-539 F-1, F-2, J-1, J-2, M-1, M-2 classifications may file forms on their own because they are students, professors, research scholars, trainees or interns, teachers, camp counselors, au pairs, and summer work travel exchange visitors, and may not choose to hire a lawyer.⁹⁵

⁹⁵ USCIS recognizes that professors, teachers, and research scholars in the J-1 and J-2 visa categories may not hire lawyers and may not file these forms themselves. USCIS recognizes that these forms may be filed by an HR Specialist or some other equivalent occupation at the sponsoring entity on behalf of these applicants. However, for the simplicity of this analysis, USCIS includes these categories as filing themselves which may result in a slight underestimation in the opportunity costs of time for the J category.

Table 22 shows the total population of applicants who chose to file Form I-539 with and without an attorney or accredited representative using Form G-28 by classification.

To estimate the new opportunity cost of time for Form I-539 applicants to file Form I-907, DHS applies the estimated time burden (0.58 hours)⁹⁶ of Form I-907 to the newly eligible population and compensation rates of who may file, with or without a lawyer. For newly eligible applicants of Form I-539, Table 23 shows the estimated annual opportunity cost of time to applicants who use an in-house or outsourced lawyer to complete and file Form I-907 requests of \$4,149,578.

Table 23. Opportunity Costs of Time to Form I-539 Applicants who file Form I-907 with an Attorney or Accredited Representative.				
	Affected Population	Time Burden to Complete Form I-907 (Hours)	Hourly Wage	Total Opportunity Cost
	A	B	C	D=(AxBxC)
F-1, F-2, J-1, J-2, M-1, M-2 Classifications:				
In-House Lawyer (\$103.81 /hr.)	2,704	0.58	\$103.81	\$162,807
Outsourced Lawyer (\$178.98/hr.)	2,704	0.58	\$178.98	\$280,698
Average Opp. Cost of in-house and Outsourced Lawyer	2,704			\$221,753
E-1, E-2, E-3, L-2, H-4, O-3, P-4, R-2 Classifications:				
In-House Lawyer (\$103.81 /hr.)	47,895	0.58	\$103.81	\$2,883,748
Outsourced Lawyer (\$178.98/hr.)	47,895	0.58	\$178.98	\$4,971,903
Average Opp. Cost of in-house and Outsourced Lawyer	47,895			\$3,927,826
Total Opportunity cost of time for all Classifications				\$4,149,578
Source: USCIS Analysis				

To estimate the new opportunity costs of time for students and exchange visitors applying for F, J or M classifications, USCIS uses an average total rate of compensation based on the effective minimum wage. DHS assumes that the following classifications:

⁹⁶ See Instructions for Request for Premium Processing Service. Form I-907. OMB No. 1615-0048 Expires July 31, 2022. Accessed at <https://www.uscis.gov/sites/default/files/document/forms/i-907instr.pdf> (last updated Sep. 30, 2020).

F-1, academic student, J-1, exchange visitor, J-2 spouse or child of J-1 exchange visitor, M-1 vocational student, and M-2 spouse or child of an M-1 vocational student are young with limited work experience/education and would therefore have lower wages. As reported by The New York Times “[t]wenty-nine states and the District of Columbia have state-level minimum hourly wages higher than the federal [minimum wage],” as do many city and county governments. Analysis by The New York Times estimates that “the effective minimum wage in the United States ... [was] \$11.80 an hour in 2019.”⁹⁷ DHS relies on this more robust minimum wage of \$11.80 as an estimate of the opportunity cost of time. In order to estimate the fully loaded wage rates, to include benefits, USCIS used the benefits-to-wage multiplier of 1.45 and multiplied it by the prevailing minimum hourly wage rate. The fully loaded hourly wage rate for someone earning the effective minimum wage rate is \$17.11.⁹⁸ Therefore, DHS estimates that the opportunity cost for each petitioner is \$9.92 per response for those petitions.⁹⁹

DHS accounts for worker benefits when estimating the total costs of compensation by calculating a benefits-to-wage multiplier using the U.S. Department of Labor, BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.45 and, therefore, is able to estimate the full opportunity cost per petitioner, including employee wages and salaries and the full cost of benefits such as paid leave, insurance, retirement, and other benefits.¹⁰⁰ DHS uses the mean

⁹⁷ “Americans Are Seeing Highest Minimum Wage in History (Without Federal Help)” Ernie Tedeschi, The New York Times, April 24, 2019. Accessed at <https://www.nytimes.com/2019/04/24/upshot/why-america-may-already-have-its-highest-minimum-wage.html> (last visited June 25, 2020).

⁹⁸ Calculation: (Effective Minimum Wage Rate) \$11.80 x (Benefits-to-wage multiplier) 1.45 = \$17.11 per hour.

⁹⁹ Calculation: (Effective Wage) \$17.11 x (Estimated Opportunity of Cost to file Form I-907) 0.58 = \$9.92.

¹⁰⁰ The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) / (Wages and Salaries per hour) (\$38.60 Total Employee Compensation per hour) / (\$26.53 Wages and Salaries per hour) = 1.454964 = 1.45 (rounded). See U.S. Department of Labor, BLS, Economic News Release, *Employer Cost for Employee Compensation (December 2020)*, Table 1. *Employer Costs for Employee Compensation by ownership* (Dec. 2020), available at https://www.bls.gov/news.release/archives/ecec_03182021.htm. (last visited Mar. 31, 2021).

hourly wage of \$27.07 per hour¹⁰¹ for all occupations to estimate the opportunity cost of time for this population in this analysis. DHS calculates the total rate of compensation as \$39.25 per hour, where the mean hourly wage is \$27.07 per hour worked and average benefits are \$12.18 per hour.¹⁰²

To estimate the new opportunity costs of time for a Form I-539 applicant filing Form I-907 to request premium processing, DHS applies the estimated public reporting time burden (0.58 hours) to the newly eligible population and compensation rate of the applicant. Therefore, for those newly eligible, as shown in Table 24, DHS estimates the total annual opportunity cost of time to F-1, F-2, J-1, J-2, M-1, M-2 classification applicants completing and filing Form I-907 requests is \$74,895 and the opportunity cost of time for E-1, E-2, E-3, L-2, H-4, O-3, P-4, R-2 classification applicants is \$348,054. DHS estimates the total opportunity cost of time for the affected population of Form I-539 applicants filing Form I-907 of \$422,949 as shown in Table 24.

Table 24. Opportunity Costs of Time to Form I-539 Applicants for Filing Form I-907, Request for Premium Processing Service				
	Affected Population	Time Burden to Complete Form I-907 (Hours)	Petitioner Cost of time	Total Opportunity Cost of Time to File From I-907
	A	B	C	D=(AxBxC)
F-1, F-2, J-1, J-2, M-1, M-2 classifications	7,547	0.58	\$17.11	\$74,895
E-1, E-2, E-3, L-2, H-4, O-3, P-4, R-2 classifications	15,289	0.58	\$39.25	\$348,054
Total	22,836			\$422,949
Source: USCIS Analysis				

DHS estimates the total additional annual cost beginning in FY 2022 to F-1, F-2, J-1, J-2, M-1, M-2 classification applicants completing and filing Form I-907 requests are

¹⁰¹ See BLS, U.S. Department of Labor, “Occupational Employment Statistics, May 2020, All Occupations.” Available at https://www.bls.gov/oes/2020/may/oes_nat.htm#00-0000 Accessed Apr. 13, 2021. (last visited Apr. 29, 2021).

¹⁰² The calculation of the weighted mean hourly wage for applicants: \$27.07 per hour *1.45 benefits-to-wage multiplier =\$39.25 (rounded) per hour.

expected to be \$296,648 shown in Table 25. Note that this cost includes an average opportunity cost time for lawyers, which assumes half of the applicants use an in house lawyer and half the applicants use an outsourced lawyer.

Table 25. Total Costs to Form I-539 F-1, F-2, J-1, J-2, M-1, M-2 Classification Applicants for filing Form I-907, Request for Premium Processing	
Average Opportunity Cost Time for Lawyers to Complete Form I-907	\$221,753
Average Opportunity Cost Time for Students to Complete Form I-907	\$74,895
Total Cost	\$296,648
Source: USCIS Analysis	

DHS estimates the total additional annual cost beginning in FY 2025 to E-1, E-2, E-3, L-2, H-4, O-3, P-4, R-2 classification applicants completing and filing Form I-907 requests are expected to be \$4,275,880 shown in Table 26. From a societal perspective, the opportunity cost measures represent societal costs, while the filing fees represent transfers from applicants to the government.¹⁰³

Table 26. Total Costs to Form I-539 E-1, E-2, E-3, L-2, H-4, O-3, P-4, R-2 Applicants for filing Form I-907, Request for Premium Processing	
Average Opportunity Cost Time for Lawyers to Complete Form I-907	\$3,927,826
Average Opportunity Cost Time for Workers to Complete Form I-907	\$348,054
Total Cost	\$4,275,880
Source: USCIS Analysis	

In Table 27, DHS uses the estimated new population to complete Form I-907. DHS estimates that as a result of the increase in filing fees for Form I-907, Request for Premium Processing Service, the additional annual transfer payments from the new Form I-539 F-1, F-2, J-1, J-2, M-1, M-2 classification fee-paying population to DHS will be \$17,939,250 in FY 2022.

¹⁰³ See Instructions for Application to Extend/Change Nonimmigrant Status. Form I-539. OMB No. 1615-0003 Expires Nov. 30, 2021. Accessed at <https://www.uscis.gov/sites/default/files/document/forms/i-539instr.pdf> (last updated Mar. 10, 2021). The USCIS Stabilization Act did not change the time burden to complete any of the classifications for Form I-539, nor form fees. The public reporting burden for this collection of information is in the form instructions.

DHS also estimates that annual transfer payments from Form I-539 E-1, E-2, E-3, L-2, H-4, O-3, P-4, R-2 classification applicants who request premium processing by filing Form I-907 to DHS will be \$110,572,000 in FY 2025.

Table 27. Filing Fees for Form I-539 Applicants for Filing Form I-907, Request for Premium Processing Service			
	Newly Eligible Population	New Fees for Form I-907	Fees for Filing Form I-907
	A	B	C=(AxB)
Estimate of Eligible Form I-539 Petitions (53%) Students	10,251	\$1,750	\$17,939,250
Estimate of Eligible Form I-539 Petitions (53%) Workers	63,184	\$1,750	\$110,572,000
Total	73,435	\$1,750	\$128,511,250
Source: USCIS Analysis			

e) Form I-765, Application for Employment Authorization, Costs & Transfer

Payments

In this final rule, DHS is including Form I-765, Application for Employment Authorization, to the list of immigration benefit requests permitted to apply for premium processing. Table 28 shows the total receipts received for Form I-765 for FY 2017 through FY 2021. Table 28 also shows the number of Form I-765 receipts filed with an attorney or accredited representative using Form G-28. The number of Form G-28 submissions allows USCIS to estimate the number of Forms I-765 that are filed by an attorney or accredited representative and thus estimate the opportunity costs of time for an applicant, attorney or accredited representative to file each form. From FY 2017 through FY 2021, total annual receipts for Form I-765 ranged from a low of 2,005,591 in FY 2020 to a high of 2,588,827 in FY 2021. Based on a 5-year annual average, DHS estimates the annual average receipts of Form I-765 to be 2,259,872 with 48 percent of applications filed by an attorney or accredited representative.

Table 28. Form I-765 Application for Employment Authorization, Receipts Received by USCIS, with Form G-28 Notice of Entry of Appearance as Attorney or Accredited Representative, FY 2017 through FY 2021.				
FY	Form I-765 Receipts	Form G-28 Receipts	Form G-28 Receipts	Percent of Form I-765 Receipts

		Received with a Form I-765 Receipt	Received without Form I-765 Receipt	Filed with a Form G-28 Receipt
2017	2,372,692	1,077,974	1,294,718	45%
2018	2,140,985	947,711	1,193,274	44%
2019	2,191,145	1,052,774	1,138,371	48%
2020	2,005,712	1,027,689	978,023	51%
2021	2,588,827	1,355,324	1,233,503	52%
Total	11,299,361	5,461,472	5,837,889	
5-year Annual Average	2,259,872	1,092,294	1,167,578	48%
Source: USCIS, Office of Policy and Strategy, Policy Research Division (PRD), CLAIMS3 and ELIS database, October 18, 2021.				

DHS does not know how many newly eligible Form I-765 applicants will choose to submit a premium processing request because this population has not previously been eligible to file for premium processing.

DHS is prioritizing premium processing for some Form I-765 categories. DHS anticipates to begin premium processing Employment Authorization Documents for students applying for Optional Practical Training (OPT) and exchange visitors beginning in FY 2022. Table 29 shows the estimated populations that will be eligible for premium processing. Based on a 5-year annual average, DHS estimates the annual average receipts of Form I-765 eligible categories to be 218,076 beginning in FY 2022. DHS also estimates that the annual average receipts of Form I-765 for the additional categories to be 102,495 beginning in 2025 based on a 5-year annual average. DHS identifies a final expanded eligibility group consisting of an additional 1,136,691 applicants that could be covered under this rule; however due to the size and nature of this group, DHS does not have immediate plans for when premium processing will be implemented for them. Lastly, DHS excludes remaining categories that USCIS has no current plans to expand to implement premium processing for.

Table 29. Form I-765 Classifications by Expected Implementation, FY 2017 through FY 2021.					
FY	Form I-765 Receipts Eligible in 2022	Form I-765 Receipts Eligible in 2025	Form I-765 Receipts Unsure of Implementation	Form I-765 Receipts Unlikely Categories to be Eligible for	Total

				Premium Processing	
2017	237,072	96,806	1,112,502	926,065	2,372,445
2018	235,622	100,316	977,641	827,050	2,140,629
2019	226,275	110,743	1,165,725	686,547	2,189,290
2020	207,550	110,449	1,056,139	625,570	1,999,708
2021	183,859	94,160	1,371,449	945,495	2,594,963
Total	1,090,378	512,474	5,683,456	4,010,727	11,297,035
5-year Annual Average	218,076	102,495	1,136,691	802,145	2,259,407
Source: U.S. Citizenship and Immigration Services, Office of Performance and Quality, C3 Consolidated via SAS, queried October 2021. *Note: Totals in this table are .1% off from Table 28 due to different pull dates of the data.					

Since Form I-765 applicants have never been eligible to request premium processing, DHS has no historical data to determine how many of the newly eligible population will take advantage of premium processing. Therefore, DHS uses the 53-percent average of Forms I-129 and I-140 developed in Table 6, that request premium processing for this newly eligible population as a proxy.

DHS understands that some Form I-765 classifications are already on a congressionally mandated or regulatory clock to adjudicate their forms in 30-90 days and therefore it would not be reasonable to assume these applicants would pay the additional fee to submit a premium processing request. Some Form I-765 applicants for asylum-based categories may also be submitting Form I-539 concurrently so they may not be interested in paying for premium processing twice. DHS also recognizes that some classifications could be more interested in faster adjudication times and may submit premium processing requests at a rate more consistent with the estimates applied to the other populations in this analysis. While EAD eligibility categories are not effective predictors of future likelihood to request premium processing, applying the assumptions above to the Form I-765 data by eligibility category yields a more consistent

approximation of potential population requesting premium processing for their EADs.¹⁰⁴

Using 53-percent as a proxy, DHS estimates that 115,580 applicants (53-percent of the eligible population) out of the 218,076 employment authorization document applicants who apply annually may submit a premium processing request with their Form I-765 application beginning in FY 2022.¹⁰⁵ DHS also estimates that 54,322 applicants (53-percent of the eligible population) out of the 102,495 employment authorization document applicants who apply annually may submit a premium processing request with their Form I-765 application beginning in FY 2025.¹⁰⁶

In order to estimate the opportunity costs of time for completing and filing a Form I-907 submitted with a Form I-765, DHS assumes that to prepare, complete, and file these forms an applicant will use either an in-house lawyer, outsourced lawyer, or will do so themselves. Based on the data from Table 30, 48-percent of Form I-765 applications were filed with an attorney or accredited representative using Form G-28, with 52-percent¹⁰⁷ of Form I-765 applications being filed without a Form G-28. DHS will apply these same percentages to applicants requesting premium processing with a Form I-765, expecting that 48-percent will use an attorney or accredited representative and 52-percent will file the Form I-907 themselves. Table 30 shows the total population by percentage for applicants who may choose to file Form I-765 with and without Form G-28.

Table 30. Estimated Form I-765, Application for Employment Authorization, populations Filing with and without Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.			
Percent	Estimated Form I-765 filed with Form G-28	Estimated Form I-765 filed without Form G-28	Total
	A	B	C=(A+B)
Estimate of Eligible Form I-765 Petitions in 2022(53%)	60,102	55,478	115,580

¹⁰⁴ See Form I-765, Application for Employment Authorization, All Receipts, Approvals, Denials Grouped by Eligibility Category and Filing Type at https://www.uscis.gov/sites/default/files/document/reports/I-765_Application_for_Employment_FY03-20.pdf. USCIS, OPQ, C3 Consolidated via SAS, queried Oct 2020. (accessed 10/15/2021)

¹⁰⁵ Calculation: 218,076 applicants * 53 percent = 115,580.

¹⁰⁶ Calculation: 102,495 applicants * 53 percent = 54,322.

¹⁰⁷ Calculation: 100 percent – 48 percent filing with Form G-28 = 52 percent only filing Form I-765.

Estimate of Eligible Form I-765 Petitions in 2025 (53%)	28,247	26,075	54,322
Source: USCIS Analysis			

To estimate the opportunity costs of time to file a Form I-907 to accompany a Form I-765 using an attorney or accredited representative, DHS applies the estimated public reporting time burden (0.58 hours) to the population who will be eligible for premium processing beginning in FY 2022. Table 31 shows the estimated annual opportunity costs of time to complete and file Form I-907 with a Form I-765 if filed by an in-house lawyer or outsourced lawyer. The opportunity cost of time is \$4,928,911 based on a simple average of the cost for an in-house lawyer and an outsourced lawyer.

Table 31. Total Opportunity Costs of Time to an Attorney or Accredited Representative to Complete and File Form I-907, Request for Premium Processing Service with a Form I-765 beginning in FY 2022.				
	Estimate of Eligible Form I-765 Petitions filed with Form G-28	Time Burden to Complete Form I-907 (Hours)	Hourly Wage Rate	Total Opportunity Cost
	A	B	C	D=(AxBxC)
In-House Lawyer (\$103.81 /hr.)	60,102	0.58	\$103.81	\$3,618,729
Outsourced Lawyer (\$178.98/hr.)	60,102	0.58	\$178.98	\$6,239,092
Average	60,102			\$4,928,911
Source: USCIS Analysis				

To estimate the opportunity costs of time to complete and file Form I-907 with a Form I-765 without an attorney or accredited representative, DHS applies the estimated public reporting time burden (0.58 hours)¹⁰⁸ to the newly eligible population and compensation rate of the applicant. Therefore, for those newly eligible, as shown in Table 32, DHS estimates the total annual opportunity costs of time to applicants completing and filing Form I-907 to be \$1,557,378.

Table 32. Opportunity Costs to Form I-765, Application for Employment Authorization, Applicants for Filing Form I-907, Request for Premium Processing Service beginning in FY 2022.				
	Newly Eligible Population	Time Burden to Complete Form I-907 (Hours)	HR Specialist Cost of time (\$/hr.)	Total Opportunity Cost

¹⁰⁸ See Instructions for Request for Premium Processing Service. Form I-907. OMB No. 1615-0048 Expires July 31, 2022. Accessed at <https://www.uscis.gov/sites/default/files/document/forms/i-907instr.pdf> (last updated Sep. 30, 2020).

	A	B	C	D=(AxBxC)
Estimate of Eligible Form I-765 Petitions	55,478	0.58	\$48.40	\$1,557,378
Source: USCIS Analysis				

To estimate the opportunity cost of time to file a Form I-907 to accompany a Form I-765 using an attorney or accredited representative, DHS applies the estimated public reporting time burden (0.58 hours)¹⁰⁹ to the population who will be eligible for premium processing beginning in FY 2025 and compensation rates of filers. Table 33 shows the estimated annual opportunity costs of time to complete and file Form I-907 with a Form I-765 if filed by an in-house lawyer or outsourced lawyer. The opportunity cost of time is \$2,316,511 based on a simple average of the cost for an in-house lawyer and an outsourced lawyer.

Table 33. Total Opportunity Costs of Time to an Attorney or Accredited Representative to Complete and File Form I-907, Request for Premium Processing Service with a Form I-765 beginning in FY 2025.				
	Estimate of Eligible Form I-765 Petitions filed with Form G-28	Time Burden to Complete Form I-907 (Hours)	Hourly Wage Rate	Total Opportunity Cost
	A	B	C	D=(AxBxC)
In House Lawyer (\$103.81 /hr.)	28,247	0.58	\$103.81	\$1,700,746
Outsourced Lawyer (\$178.98/hr.)	28,247	0.58	\$178.98	\$2,932,276
Average	28,247			\$2,316,511
Source: USCIS Analysis				

To estimate the opportunity cost of time to complete and file Form I-907 with a Form I-765 without an attorney or accredited representative, DHS applies the estimated public reporting time burden (0.58 hours) to the population who will be eligible for premium processing beginning in FY 2025 and compensation rate of the applicant. For those newly eligible, shown in Table 34, DHS estimates the total annual opportunity cost of time to applicants completing and filing Form I-907 to be \$731,977.

Table 34. Opportunity Costs to Form I-765, Application for Employment Authorization, Applicants for Filing Form I-907, Request for Premium Processing Service beginning in FY 2025.
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¹⁰⁹ See Instructions for Request for Premium Processing Service. Form I-907. OMB No. 1615-0048 Expires July 31, 2022. Accessed at <https://www.uscis.gov/sites/default/files/document/forms/i-907instr.pdf> (last updated Sep. 30, 2020).

	Newly Eligible Population	Time Burden to Complete Form I-907 (Hours)	HR Specialist Cost of time (\$/hr.)	Total Opportunity Cost
	A	B	C	D=(AxBxC)
Estimate of Eligible Form I-765 Petitions (53%)	26,075	0.58	\$48.40	\$731,977
Source: USCIS Analysis				

Using the population estimates, DHS next calculates the total costs for the new Form I-765 population to complete and file premium processing requests using Form I-907. DHS estimates the total annual cost to applicants completing and filing Form I-907 requests to be \$6,486,289 beginning in FY 2022, and \$3,048,488 beginning in FY 2025 as shown in Table 35. From a societal perspective, the opportunity cost measures represent social costs, while the filing fees represent transfers from applicants to the government.¹¹⁰

Table 35. Annual Costs to Form I-765 Applicants for Completing and Filing Form I-907, Request for Premium Processing Service.			
	Opportunity Cost of Time Completing Form I-907 (Lawyer), Table 31	Opportunity Cost of Time Completing Form I-907 (Applicant), Table 32	Annual Cost
	A	B	D=(A+B+C)
Estimate of Eligible Form I-765 Petitions (53%) beginning in FY 2022	\$4,928,911	\$1,557,378	\$6,486,289
Estimate of Eligible Form I-765 Petitions (53%) beginning in FY 2025	\$2,316,511	\$731,977	\$3,048,488
Total			\$9,534,777
Source: USCIS Analysis			

In Table 36, DHS uses the population estimates from above to calculate the transfer payments for the newly eligible Form I-765 population to DHS. DHS estimates

¹¹⁰ See Instructions for Application for Employment Authorization. Form I-765. OMB No. 1615-0040 Expires July 31, 2022. Accessed at <https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf> (last updated Aug. 25, 2020). The USCIS Stabilization Act did not change the time burden to complete any of the classifications for Form I-765, nor form fee. The public reporting burden for this collection of information is in the pdf above.

that annual transfer payments from Form I-765 applicants requesting request premium processing using Form I-907 will be \$173,370,000 to DHS.

Table 36. Fees to Form I-765 Applicants Requesting Premium Processing using Form I-907 beginning in FY 2022.			
	Newly Eligible Population	New Fees for Form I-907	Fees to File Form I-907
	A	B	C=(BxA)
Estimate of Eligible Form I-765 Petitions	115,580	\$1,500	\$173,370,000
Source: USCIS Analysis			

In Table 37, DHS uses the population estimates from above to calculate the transfer payments from the newly eligible Form I-765 population to DHS. DHS estimates that annual transfer payments from Form I-765 applicants requesting request premium processing using Form I-907 will be \$81,483,000 to DHS.

Table 37. Fees to Form I-765 Applicants Requesting Premium Processing using Form I-907 beginning in FY 2025.			
	Newly Eligible Population	New Fees for Form I-907	Fees to File Form I-907
	A	B	C=(BxA)
Estimate of Eligible Form I-765 Petitions (53%)	54,322	\$1,500	\$81,483,000
Source: USCIS Analysis			

f) Government Costs of this Final Rule

This final rule will require USCIS enhancements to handle the projected volumes of expedited requests without adverse impact to other processing times. The costs of these enhancements are not estimated but are expected to be covered by the fee increases (transfers) from Form I-129 and Form I-140 petitioners/applicants that request premium processing. DHS does not know how much it will cost to add new categories to apply for premium processing, and these costs are unquantified.

The USCIS Stabilization Act prohibits USCIS from making premium processing available if it adversely affects processing times for immigration benefit requests not designated for premium processing or the regular processing of immigration benefit requests so designated. Therefore, USCIS must first raise sufficient funds to ensure it has

the staffing and IT resources to expand premium processing availability. In addition to covering the costs of providing expanded premium processing services, the Stabilization Act authorizes USCIS to spend additional revenue collected as a result of this rule on infrastructure improvements in adjudication processes and information services, reducing the number of pending immigration and naturalization benefit requests or otherwise offsetting the cost of providing services.

In accordance with directives outside the scope of this rulemaking, DHS has prioritized and is in the process of expanding electronic filing for all applications and benefit requests. Some of the immigration benefit requests newly designated for premium processing are already filed electronically.¹¹¹ Specifically, Forms I-539 and I-765 are both currently available for electronic filing. However, premium processing requests through Form I-907 are currently still paper based. USCIS would need to make systems changes to give users the ability to file premium processing requests with the relevant underlying form that is electronically available. This expansion of electronic filing of the premium processing form is a prerequisite to expanding the availability of premium processing to newly designated immigration benefit requests without adversely affecting processing times for other benefits. DHS must hire and train new staff with revenue from current premium processing requests in order to expedite adjudication of premium processing for the newly eligible population, consistent with the statutory requirement, that other processing times not be adversely affected.

Because the Act authorizes USCIS to use additional revenue for other improvements and, separately, directs USCIS to semi-annually advise appropriate Congressional Committees of progress on a 5-year plan for infrastructure improvements. For the purpose of this Regulatory Impact Analysis, DHS assumes expanded premium

¹¹¹ Forms Available to File Online <https://www.uscis.gov/file-online/forms-available-to-file-online> (last updated Dec. 12, 2021).

processing to start in FY 2022 for the additional Form I-140 categories, as well as certain categories of Form I-539 and Form I-765. DHS also assumes some additional Form I-539 and Form I-765 categories will start in FY 2025 due to the possibility that revenues do not yet exist to cover any potential costs without adversely affecting other benefit's processing times, as directed by Congress.

As expected, the current processing times for the newly designated immigration benefit requests generally exceed the proposed premium processing timeframes by many months. USCIS generally cannot reallocate staff to adjudicate these immigration benefit requests without adversely affecting processing times, for other immigration benefit requests. Therefore, USCIS must hire and train new staff to handle the expanded availability of premium processing, requiring time and resources.

Future revenues from premium processing are expected to exceed future costs, accomplishing Congress' intention in authorizing the expansion of premium processing. USCIS is unable to hire additional employees in anticipation of a potential surge in upgrades to pending petitions and applications unless the funds are already available, to pay for those employees. If USCIS were to make premium processing available for a high volume of petitions/applications with a significant backlog and without the staff on hand to take appropriate action within the applicable processing timeframe, then USCIS would be required to refund the premium processing fees.

While potential costs to USCIS of expanding premium processing without harm to non-premium processing times are volume-dependent and difficult to quantify, the above projections suggest that the described implementation plan is expected to generate adequate resources to cover the costs required to support the expansion of premium processing without risk to non-premium processing times.

g) Benefits to the Federal Government

The USCIS Stabilization Act provides specific purposes that the premium processing fees can be used for. Consistent with those permissible purposes, the premium processing fees collected will be used to provide the premium processing services; make infrastructure improvements in adjudications processes and the provision of information and services to immigration and naturalization benefit requestors; and respond to adjudication demands, including by reducing the number of pending immigration and naturalization benefit requests. The primary benefit of this rule to DHS is the opportunity to increase revenue needed to make improvements in adjudication processes. For example, increases in revenue will allow USCIS to pay for infrastructure improvements, like overhead (such as facility costs, IT equipment and systems, or other expenses) and pay the salaries and benefits of current and new clerical staff, officers, and managers to provide premium processing services and improve agency response to adjudicative demands.

h) Qualitative Benefits to Petitioners and Applicants

Petitioners of Form I-140 (EB-1, multinational executives and managers and EB-2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver) who were previously ineligible for premium processing may be able to have their petitions reviewed quicker. As a result, an adjudicative action may be taken more quickly. This change benefits businesses that previously would have had to wait longer to receive adjudicative action (such as a notice of approval) for an employee. Other benefits that may accrue to beneficiaries of Form I-140 petitions generally include INA section 204(j) portability eligibility, *see* 8 CFR 245.25, priority date retention, *see* 8 CFR 204.5(e), and AC21-based H-1B extension eligibility, *see* 8 CFR 214.2(h)(13)(iii)(E). Benefits also may accrue to H-4 dependents who may become eligible for employment pursuant to the I-140 petition approval, *see* 8 CFR

214.2(h)(9)(iv) and 274a.12(c)(26), and to beneficiaries (principal and derivative) under 8 CFR 204.5(p). and 274a.12(c)(35).

Form I-539 applicants may now receive an adjudicative action on their request for a change of status or extension of stay sooner than before, which may alleviate concern about lapses in their nonimmigrant status. This will provide students and trainees greater predictability in processing timeframes so that they may change their status and start school or training on time. The greater predictability will also allow applicants to plan international travel as these applicants are considered to have abandoned their application if they leave the United States while their application is pending. In addition, applicants who may work or apply for work authorization pursuant to their status may do so more quickly than they could without premium processing.

Applicants of Form I-765 may now benefit through receipt of an adjudicative decision in a specified timeframe making those applicants eligible to work legally in the United States sooner than they would have previously. This will allow applicants to start working sooner rather than having to wait for the full processing time period before seeking employment. This could result in cost savings to some applicants who would have had to wait to receive wages without premium processing. This could also result in additional tax revenue to be collected by the government if these workers enter the labor force earlier than they would have otherwise.

i) Final Costs and Transfer Payments of the Final Rule

Undiscounted Costs and Transfer Payments

DHS summarizes the annual transfer payments from Form I-129 and I-140 petitioners to DHS. Table 38 details the annual transfer payments of this final rule from the Form I-129 and Form I-140 fee-paying population for FY 2021 to DHS was \$409,559,500 in FY 2021, due to the increase in filing fees.

Table 38. Summary of Transfer Payments from Fee-Paying Form I-129 and Form I-140 Petitioners to DHS in FY 2021.	
Description	Increase in Transfer Payments
Form I-129, Petition for a Nonimmigrant Worker	\$306,448,000
Form I-140, Immigrant Petition for Alien Workers*	\$103,111,500
Annual Transfers (undiscounted)	\$409,559,500
*Note: Currently designated eligible Form I-140 Classifications: E11, E12, E21 (non-NIW), E31, E32, EW3	

DHS summarizes the estimated annual transfer payments from currently eligible Form I-129 and I-140 petitioners to DHS, and the estimated annual transfer payments from newly eligible classification Form I-140 petitioners, Form I-539 applicants, and Form I-765 applicants to DHS. Table 39 details that the estimated annual transfer payments of this final rule from the currently eligible Form I-129, Form I-140 and newly eligible Form I-140, Form I-539 and Form I-765 fee-paying population to DHS will be \$663,722,850 due to the increase in filing fees for year 2 through 4 of this analysis, FY 2022 through FY 2024.

Table 39. Summary of Estimated Total Transfer Payments from Fee-Paying Form I-129 and Form I-140 Petitioners and Newly Eligible Form I-140 Petitioners, Form I-539 Applicants and Form I-765 Applicants to DHS in this Final Rule, FY 2022 through FY 2024.	
Description	Estimated Annual Transfer Payments
Form I-129, Petition for a Nonimmigrant Worker	\$295,113,180
Form I-140, Immigrant Petition for Alien Workers*	\$82,872,920
Newly Eligible Form I-140, Immigrant Petition for Alien Workers*, Transfers	\$94,427,500
Form I-539, Application to Extend/Change Nonimmigrant Status, Transfers	\$17,939,250
Form I-765, Application for Employment Authorization, Transfers	\$173,370,000
Annual Transfers (undiscounted)	\$663,722,850
*Note: Currently designated eligible Form I-140 Classifications: E11, E12, E21 (non-NIW), E31, E32, EW3	

DHS also presents the total annual transfers from the petitioners and applicants who may be able to request premium processing in FY 2025. The newly eligible applicants and petitioners are those that may be able to file Form I-907 with their Forms I-539 (application to extend/change nonimmigrant status, E-1, E-2, E-3, H-4, L-2, O-3, P-4, or R-2 classifications), and additional classifications of Form I-765. Table 40 details that the total annual transfer of this final rule from newly eligible premium processing

requestors will be \$192,055,000 to DHS due to the expected additional filing fees for year 5 through 10 of this analysis, FY 2025 through FY 2030.

Table 40. Summary of Estimated Total Annual Transfers in this Final Rule after FY 2025.	
Filing Fees	Estimated Annual Fees
Form I-539, Application to Extend/Change Nonimmigrant Status, Transfers	\$110,572,000
Form I-765, Application for Employment Authorization, Transfers	\$81,483,000
Total Annual Transfers (undiscounted)	\$192,055,000

DHS presents the total annual costs to the petitioners and applicants who may now be able to request premium processing beginning in FY 2022. The newly eligible applicants and petitioners may be able to file Form I-907 with their Forms I-539 (application to extend/change nonimmigrant status, F-1, F-2, J-1, J-2, M-1, or M-2 classifications, certain classifications of Form I-765, and I-140 (EB-1, multinational executives and managers, and EB-2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver). Table 41 details the total annual costs of this final rule to premium processing requestors of \$9,717,505.

Table 41. Summary of Estimated Total Annual Costs in this Final Rule beginning in FY 2022.	
Opportunity Costs of Time	Estimated Annual Cost
Newly Eligible Form I-140, Immigrant Petition for Alien Workers*, Opportunity Costs	\$2,934,568
Form I-539, Application to Extend/Change Nonimmigrant Status, Opportunity Costs	\$296,648
Form I-765, Application for Employment Authorization, Opportunity Costs	\$6,486,289
Government Costs of Providing Premium Processing to Newly Eligible Populations	Unquantified
Total Annual Costs (undiscounted)	\$9,717,505 + Government Costs
*Note: Form I-140 EB-1, multinational executives and managers, and EB-2, members of professions with advanced degrees or exceptional ability seeking a national interest waiver.	

DHS presents the total annual costs to the petitioners and applicants who may now be able to request premium processing in FY 2025. The newly eligible applicants and petitioners may be able to file Form I-907 with their Forms I-539 (application to extend/change nonimmigrant status, E-1, E-2, E-3, H-4, L-2, O-3, P-4, or R-2

classifications), and additional classifications of Form I-765. Table 42 details the total annual costs of this final rule to premium processing requestors of \$7,324,368.

Table 42. Summary of Estimated Total Annual Costs in this Final Rule after FY 2025.	
Opportunity Costs of Time and Filing Fees	Estimated Annual Cost
Form I-539, Application to Extend/Change Nonimmigrant Status, Costs	\$4,275,880
Form I-765, Application for Employment Authorization, Costs	\$3,048,488
Government Costs of Providing Premium Processing to Newly Eligible Populations	Unquantified
Total Annual Costs (undiscounted)	\$7,324,368 + Government Costs

Discounted Costs and Transfer Payments

The Continuing Appropriations Act, 2021 and Other Extensions Act, signed into law on October 1, 2020, contained the Emergency Stopgap USCIS Stabilization Act, which set new fees for premium processing of immigration benefit requests that had been designated for premium processing as of August 1, 2020, and expanded USCIS authority to establish and collect new premium processing fees and to use those additional funds for expanded purposes. Table 43 shows the transfer payments from Form I-129 and Form I-140 premium processing requestors to DHS over the 10-year implementation period of this final rule. DHS used the actual transfer payments for FY 2021, and estimated FY 2022 through FY 2030 based on the 5-year annual average populations. The table also shows the estimated annual transfer payments from newly eligible classification Form I-140 petitioners, Form I-539 applicants, and Form I-765 applicants to DHS for some classifications beginning in FY 2022, and for other classifications in FY 2025. DHS estimates the total annualized transfer payments to be \$743,160,614 discounted at 3 percent and \$729,337,131 discounted at 7 percent.

Table 43. Total Undiscounted and Discounted Transfer Payments of this Final Rule.		
FY	Total Estimated Transfers	
	\$409,559,500	(Undiscounted FY 2021)
	\$663,722,850	(Undiscounted FY 2022 through FY 2024)
	\$855,777,850	(Undiscounted FY 2025 through FY 2030)
	Discounted at 3 percent	Discounted at 7 percent
2021	\$397,630,583	\$382,765,888

2022	\$625,622,443	\$579,721,242
2023	\$607,400,430	\$541,795,553
2024	\$589,709,156	\$506,350,984
2025	\$738,201,491	\$610,157,780
2026	\$716,700,477	\$570,240,916
2027	\$695,825,705	\$532,935,435
2028	\$675,558,937	\$498,070,500
2029	\$655,882,463	\$465,486,449
2030	\$636,779,091	\$435,034,064
Total	\$6,339,310,776	\$5,122,558,811
Annualized Cost	\$743,160,614	\$729,337,131

In this Regulatory Impact Analysis, DHS is projecting a phased implementation and estimates the costs starting in FY 2022 for certain classifications and FY 2025 for additional new classifications, which is explained in greater detail in the “Government Costs” section of this analysis. This phased implementation will allow current premium processing revenue to cover potential costs from the expedited processing of a large volume of new requests Table 44 shows the cost over the 10-year implementation period of this final rule if some of these newly designated immigration benefit requests are available in FY 2022 and some are not available for premium processing until FY 2025. DHS estimates the annualized cost to be \$12,744,217 discounted at 3 percent and \$12,216,562 discounted at 7 percent. DHS is using a phased implementation plan for the annualized cost estimate for this rule. The costs to the government are not estimated or included in these totals but are expected to be covered by the fee increases (transfers) from currently eligible Form I-129 and Form I-140 petitioners/applicants that request premium processing.

Table 44. Total Undiscounted and Discounted Costs of this Final Rule with delayed implementation (Primary).		
FY	Total Estimated Costs	
	\$9,717,505	(Undiscounted FY 2022 through FY 2024)
	\$17,041,872	(Undiscounted FY 2025 through FY 2030)
	Discounted at 3 percent	Discounted at 7 percent
2021	\$0	\$0
2022	\$9,159,680	\$8,487,645
2023	\$8,892,893	\$7,932,378
2024	\$8,633,877	\$7,413,438
2025	\$14,700,468	\$12,150,619
2026	\$14,272,300	\$11,355,719

2027	\$13,856,601	\$10,612,821
2028	\$13,453,011	\$9,918,525
2029	\$13,061,176	\$9,269,649
2030	\$12,680,753	\$8,663,224
Total	\$82,024,310	\$61,970,557
Annualized Cost	\$12,744,217	\$12,216,562

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking. This rule is exempt from notice-and-comment rulemaking. Therefore, a regulatory flexibility analysis is not required for this rule.

D. Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)

The Congressional Review Act (CRA) was included as part of SBREFA by section 804 of SBREFA, Pub. L. 104-121, 110 Stat. 847, 868, et seq. OIRA has determined that this rule is a major rule as defined by the CRA. DHS has complied with the CRA's reporting requirements and has sent this final rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1).

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule, that includes any Federal mandate that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one

year by State, local, and tribal governments, in the aggregate, or by the private sector.¹¹²

This rule is exempt from the written statement requirement, because DHS did not publish a notice of proposed rulemaking for this rule.

In addition, the inflation-adjusted value of \$100 million in 1995 is approximately \$178 million in 2021 based on the Consumer Price Index for All Urban Consumers (“CPI-U”).¹¹³ This final rule does not contain a Federal mandate as the term is defined under UMRA.¹¹⁴ The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

F. Executive Order 13132 (Federalism)

This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of E.O. 13132, 64 FR 43255 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to

¹¹² See 2 U.S.C. 1532(a).

¹¹³ See U.S. Department of Labor, BLS, “Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month,” available at <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202112.pdf> (last visited Jan. 13, 2022). Calculation of inflation: (1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2021); (2) Subtract reference year CPI-U from current year CPI-U; (3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U; (4) Multiply by 100 = [(Average monthly CPI-U for 2021 – Average monthly CPI-U for 1995)/(Average monthly CPI-U for 1995)]*100=[(270.970–152.383)/152.383]*100=(118.587/152.383)*100=0.77821673*100=77.82 percent=78 percent (rounded). Calculation of inflation-adjusted value: \$100 million in 1995 dollars*1.78=\$178 million in 2021 dollars.

¹¹⁴ The term “Federal mandate” means a Federal intergovernmental mandate or a Federal private sector mandate. See 2 U.S.C. 1502(1), 658(6).

minimize litigation and undue burden on the Federal court system. DHS has determined that this final rule meets the applicable standards provided in section 3 of E.O. 12988.

H. National Environmental Policy Act

DHS Directive 023-01 Rev. 01 (Directive) and Instruction Manual 023-01-001-01 Rev. 01 (Instruction Manual) establish the policies and procedures that DHS and its components use to comply with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations for implementing NEPA.¹¹⁵

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (“categorical exclusions”) that experience has shown do not have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement.¹¹⁶

The Instruction Manual establishes categorical exclusions that DHS has found to have no such effect.¹¹⁷ Under DHS NEPA implementing procedures, for an action to be categorically excluded it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.¹¹⁸

This rule codifies in regulation the USCIS Stabilization Act, which amended USCIS authority to provide premium processing services and to establish and collect premium processing fees for those services and only amends DHS premium processing regulations to codify those fees set by the USCIS Stabilization Act, as well as the pre-existing timeframes for previously designated immigration benefit requests, and to

¹¹⁵ 40 CFR parts 1500 through 1508.

¹¹⁶ 40 CFR 1507.3(e)(2)(ii) and 1501.4.

¹¹⁷ See Appendix A, Table 1.

¹¹⁸ Instruction Manual section V.B(2)(a) through (c).

establish new fees and processing timeframes for the new immigration benefit requests that are now designated for premium processing.

DHS has determined that this rule clearly fits within categorical exclusions A3(a) and (b) in Appendix A of the Instruction Manual established for rules of a strictly administrative or procedural nature, and rules that implement, without substantive change, statutory or regulatory requirements.

This rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this rule is categorically excluded from further NEPA review.

I. Family Assessment

DHS has reviewed this rule in line with the requirements of section 654 of the Treasury and General Government Appropriations Act, 1999,¹¹⁹ enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.¹²⁰ DHS has systematically reviewed the criteria specified in section 654(c)(1), by evaluating whether this regulatory action: (1) impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) only financially impacts families, if at all, to the extent such impacts are justified; (6) may be carried out by State or local government or by the family; or (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the agency determines a regulation may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

¹¹⁹ See 5 U.S.C. 601 note.

¹²⁰ Pub. L. 105-277, 112 Stat. 2681 (1998).

DHS has determined that the implementation of this regulation will not negatively affect family well-being and will not have any impact on the autonomy or integrity of the family as an institution.

J. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-12, DHS must submit to OMB, for review and approval, any reporting requirements inherent in a rule, unless they are exempt. *See* Public Law 104-13, 109 Stat. 163 (May 22, 1995). The Information Collection Table 45 below shows the summary of forms that are part of this rulemaking.

Table 45. Information Collection Changes Associated with this Final Rule.		
OMB Control Number	Form Number and Title	Type of Information Collection.
1615-0048	Form I-907, Request for Premium Processing Service	Revision of a Currently Approved Collection.
1615-0003	Form I-539, Application to Extend/Change Nonimmigrant Status	No material or non-substantive change of a Currently Approved Collection.
1615-0040	Form I-765, Application for Employment Authorization	No material or non-substantive change of a Currently Approved Collection.
<u>1615-0009</u>	Form I-129, Petition for a Nonimmigrant Worker	No material or non-substantive change to a currently approved collection.
<u>1615-0015</u>	Form I-140, Immigrant Petition for an Alien Worker	No material or non-substantive change to a currently approved collection.

USCIS will revise one information collection in association with this rulemaking action (see table above where the Type of Information Collection column states: “Revision of a Currently Approved Collection”). This final rule will also require non-substantive edits to the forms listed above where the Type of Information Collection column states, “No

material/non-substantive change to a currently approved collection.” Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83-C, and amended information collection instruments to OMB for review and approval in accordance with the PRA.

USCIS Form I-907

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the Federal Register to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of this final rule. All submissions received must include the OMB Control Number 1615-0048 in the body of the letter, the agency name, and Docket No. USCIS-2006-0025.

Submit comments via the Federal eRulemaking Portal Web site at <https://www.regulations.gov> under e-Docket ID number USCIS-2006-0025. To avoid duplicate submissions, please only submit comments according to the instructions specified in this rule. Comments on this information collection should address one or more of the following four points:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collection:

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Request for Premium Processing Service.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-907; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. USCIS uses the data collected on this form to process a request for premium processing. The form serves the purpose of standardizing requests for premium processing and ensures that basic information required to assess eligibility is provided by the applicant or employer/petitioner.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection I-907 is 815,773 and the estimated hour burden per response is 0.58 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 473,148 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$202,923,534.

List of Subjects in 8 CFR Part 106

Fees, Immigration.

Accordingly, the Department of Homeland Security amends part 106 of chapter I of title 8 of the Code of Federal Regulations as follows:

PART 106 — USCIS Fee Schedule

1. The authority citation for part 106 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1254a, 1254b, 1304, 1356; Pub. L. 107-609; 48 U.S.C. 1806; Pub. L. 115-218; Pub. L. 116-159.

2. Section 106.4 is revised to read as follows:

§ 106.4 Premium processing service.

(a) *General.* A person may submit a request to USCIS for premium processing of certain immigration benefit requests, subject to processing timeframes and fees, as described in this section.

(b) *Submitting a request.* A request must be submitted on the form and in the manner prescribed by USCIS in the form instructions. If the request for premium processing is submitted together with the underlying immigration benefit request, all required fees in the correct amount must be paid. The fee to request premium processing service may not be waived and must be paid in addition to, and in a separate remittance from, other filing fees.

(c) *Designated benefit requests and fee amounts.* Benefit requests designated for premium processing and the corresponding fees to request premium processing service are as follows:

(1) Application for classification of a nonimmigrant described in section 101(a)(15)(E)(i), (ii), or (iii) of the INA – \$2,500.

(2) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(i)(b) of the INA or section 222(a) of the Immigration Act of 1990, Public Law 101-649 – \$2,500.

(3) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(ii)(b) of the INA – \$1,500.

(4) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(iii) of the INA – \$2,500.

(5) Petition for classification of a nonimmigrant described in section 101(a)(15)(L) of the INA – \$2,500.

(6) Petition for classification of a nonimmigrant described in section 101(a)(15)(O)(i) or (ii) of the INA – \$2,500.

(7) Petition for classification of a nonimmigrant described in section 101(a)(15)(P)(i), (ii), or (iii) of the INA – \$2,500.

(8) Petition for classification of a nonimmigrant described in section 101(a)(15)(Q) of the INA – \$2,500.

(9) Petition for classification of a nonimmigrant described in section 101(a)(15)(R) of the INA – \$1,500.

(10) Application for classification of a nonimmigrant described in section 214(e) of the INA – \$2,500.

(11) Petition for classification under section 203(b)(1)(A) of the INA – \$2,500.

(12) Petition for classification under section 203(b)(1)(B) of the INA – \$2,500.

(13) Petition for classification under section 203(b)(2)(A) of the INA not involving a waiver under section 203(b)(2)(B) of the INA – \$2,500.

(14) Petition for classification under section 203(b)(3)(A)(i) of the INA – \$2,500.

(15) Petition for classification under section 203(b)(3)(A)(ii) of the INA – \$2,500.

(16) Petition for classification under section 203(b)(3)(A)(iii) of the INA – \$2,500.

(17) Petition for classification under section 203(b)(1)(C) of the INA – \$2,500.

(18) Petition for classification under section 203(b)(2) of the INA involving a waiver under section 203(b)(2)(B) of the INA – \$2,500.

(19) Application under section 248 of the INA to change status to a classification described in section 101(a)(15)(F), (J), or (M) of the INA – \$1,750.

(20) Application under section 248 of the INA to change status to be classified as a dependent of a nonimmigrant described in section 101(a)(15)(E), (H), (L), (O), (P), or (R) of the INA, or to extend stay in such classification – \$1,750.

(21) Application for employment authorization – \$1,500.

(d) *Fee adjustments.* The fee to request premium processing service may be adjusted by notice in the Federal Register on a biennial basis based on the percentage by which the Consumer Price Index for All Urban Consumers for the month of June preceding the date on which such adjustment takes effect exceeds the Consumer Price Index for All Urban Consumers for the same month of the second preceding calendar year.

(e) *Processing timeframes.* The processing timeframes for a request for premium processing are as follows:

(1) Application for classification of a nonimmigrant described in section 101(a)(15)(E)(i), (ii), or (iii) of the INA – 15 days.

(2) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(i)(b) of the INA or section 222(a) of the Immigration Act of 1990, Public Law 101-649 – 15 days.

(3) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(ii)(b) of the INA – 15 days.

(4) Petition for classification of a nonimmigrant described in section 101(a)(15)(H)(iii) of the INA – 15 days.

(5) Petition for classification of a nonimmigrant described in section 101(a)(15)(L) of the INA – 15 days.

(6) Petition for classification of a nonimmigrant described in section 101(a)(15)(O)(i) or (ii) of the INA – 15 days.

(7) Petition for classification of a nonimmigrant described in section 101(a)(15)(P)(i), (ii), or (iii) of the INA – 15 days.

(8) Petition for classification of a nonimmigrant described in section 101(a)(15)(Q) of the INA – 15 days.

(9) Petition for classification of a nonimmigrant described in section 101(a)(15)(R) of the INA – 15 days.

(10) Application for classification of a nonimmigrant described in section 214(e) of the INA – 15 days.

(11) Petition for classification under section 203(b)(1)(A) of the INA – 15 days.

(12) Petition for classification under section 203(b)(1)(B) of the INA – 15 days.

(13) Petition for classification under section 203(b)(2)(A) of the INA not involving a waiver under section 203(b)(2)(B) of the INA – 15 days.

(14) Petition for classification under section 203(b)(3)(A)(i) of the INA – 15 days.

(15) Petition for classification under section 203(b)(3)(A)(ii) of the INA – 15 days.

(16) Petition for classification under section 203(b)(3)(A)(iii) of the INA – 15 days.

(17) Petition for classification under section 203(b)(1)(C) of the INA – 45 days.

(18) Petition for classification under section 203(b)(2) of the INA involving a waiver under section 203(b)(2)(B) of the INA – 45 days.

(19) Application under section 248 of the INA to change status to a classification described in section 101(a)(15)(F), (J), or (M) of the INA – 30 days.

(20) Application under section 248 of the INA to change status to be classified as a dependent of a nonimmigrant described in section 101(a)(15)(E), (H), (L), (O), (P), or (R) of the INA, or to extend stay in such classification – 30 days.

(21) Application for employment authorization – 30 days.

(f) *Processing requirements and refunds.* (1) USCIS will issue an approval notice, denial notice, a notice of intent to deny, or a request for evidence within the premium processing timeframe.

(2) Premium processing timeframes will commence:

(i) For those benefits described in paragraphs (e)(1) through (16) of this section, on the date the form prescribed by USCIS, together with the required fee(s), are received by USCIS.

(ii) For those benefits described in paragraphs (e)(17) through (21) of this section, on the date that all prerequisites for adjudication, the form prescribed by USCIS, and fee(s) are received by USCIS.

(3) In the event USCIS issues a notice of intent to deny or a request for evidence, the premium processing timeframe will stop. The premium processing timeframe as specified in paragraphs (e)(1) through (21) of this section will start over on the date that USCIS receives a response to the notice of intent to deny or the request for evidence.

(4) Except as provided in paragraph (f)(5) of this section, USCIS will refund the premium processing service fee but continue to process the case if USCIS does not take adjudicative action described in paragraph (f)(1) of this section within the applicable processing timeframe as required in paragraph (e) of this section.

(5) USCIS may retain the premium processing fee and not take an adjudicative action described in paragraph (f)(1) of this section on the request within the applicable processing timeframe, and not notify the person who filed the request, if USCIS opens an investigation for fraud or misrepresentation relating to the immigration benefit request.

(g) *Availability.* (1) USCIS will announce by its official internet website, currently <http://www.uscis.gov>, the benefit requests described in paragraph (c) of this section for which premium processing may be requested, the dates upon which such availability commences or ends, and any conditions that may apply.

(2) USCIS may suspend the availability of premium processing for immigration benefit requests designated for premium processing if circumstances prevent the completion of processing of a significant number of such requests within the applicable processing timeframe.

Alejandro N. Mayorkas
Secretary,
U.S. Department of Homeland Security.

[FR Doc. 2022-06742 Filed: 3/29/2022 8:45 am; Publication Date: 3/30/2022]